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# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 104

UNITED STATES OF AMERICA, PETITIONER

vs.

RICHARD ISAAC MENASCHE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 28, 1954
CERTIORARI GRANTED OCTOBER 14, 1954

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1954

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## No. 104

## UNITED STATES OF AMERICA, PETITIONER

vs.

## RICHARD ISAAC MENASCHE

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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1 In the United States District Court for the District of Puerto Rico

*Re:* Petition for Naturalization of Richard Isaac Menasche.
Petition No. 5308.

*Docket entries*

*1953*

April 24 Petition filed.
Aug. 17 Hearing had, petition submitted.
Aug. 17 Exhibit I for Immigration Service filed. (Findings of Fact, Conclusions of Law and Recommendation of the Designated Naturalization Examiner.)
Aug. 17 Exhibit A for petitioner filed. (Declaration of Intention.)
Sept. 21 Opinion, Findings of Fact & Conclusions of Law and Judgment filed. 1 simple copy of each issued to Immigration & Naturalization Service, Miami, Fla.; Immigration & Naturalization Service, San Juan, P. R. and to Tomas I. Nido, Esq.
Oct. 20 Notice of Appeal filed.

Attest: A True Copy:

MARY AGUAYO,
*Clerk, U. S. Dist. Court.*
By SARA TEJEDOR,
*Deputy.*

2 In United States District Court

No. 5308

*Petition for naturalization*

Filed April 24, 1953

(Under General Provisions of the Immigration and Nationality Act)

*To the Honorable the District Court of United States for P. R. at San Juan, P. R.*

This petition for naturalization, hereby made and filed, respectfully shows:

(1) My full, true, and correct name is Richard Isaac Menasche. (2) My present place of residence is 51 Calle Los Tanques, Santurce, P. R. (3) My occupation is Manager, Commin Electrics of P. R. Inc. (4) I am 40 years old. (5) I was born on September 19, 1912, in Antwerp, Belgium. (6) My personal de-

scription is as follows: Sex Male, complexion Fair, color of eyes Brown, color of hair Black, height 5 feet 6 inches, weight 175 pounds, visible distinctive marks none; country of which I am a citizen subject, or national France. (7) I am married; the name of my wife is FRIEDA MENASCHE, we were married on September 21, 1945, at Cairo, Egypt, she was born at Seret, Roumania, on December 28, 1915 and entered the United States at New York, N. Y., on March 7, 1950 for permanent residence in the United States and now resides with me and was naturalized on at certificate No. ; or became a citizen by . (8) I have no children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows: . (9) My lawful admission for permanent
3 residence in the United States was at New York, New York under the name of Richard Isaac Menasche on March 7, 1948 on the Plane NC 90927. (10) Since my lawful admission for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, except as follows:

DEPARTED FROM THE UNITED STATES

| *Port* | *Date (Month, day, year)* | *Vessel or Other Means of Conveyance* |
|---|---|---|
| New York, N. Y | 4/22/1948 | By plane. |
| New York, N. Y | 3/27/1949 | By plane. |
| New York, N. Y | 3/19/1950 | By plane. |
| New York, N. Y | 3/19/1951 | By plane. |

RETURNED TO THE UNITED STATES

| *Port* | *Date (Month, day, year)* | *Vessel or Other Means of Conveyance* |
|---|---|---|
| New York, N. Y | 3/5/1949 | By plane. |
| New York, N. Y | 3/7/1950 | By plane. |
| New York, N. Y | 3/5/1951 | By plane. |
| New York, N. Y | 2/24/1952 | SS. Queen Mary. |

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen. (12) It is my intention to reside permanently in the United States. (13) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch affiliate or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that act. (14) I am able to read, write and speak the English language (unless exempted therefrom). (15) I am, and have been
4 during all the periods required by law, a person of good

moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, or to perform noncombatant service in the Armed Forces of the United States, or to perform work of national importance under civilian direction (unless exempted therefrom). (16) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since March 7, 1948 and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, since March 24, 1952; and during the past 5 years I have not been physically present in the United States for at least one-half of that period. (17) I have not heretofore made petition for naturalization: No. on at in the Court, and such petition was denied by that Court for the following reasons, to wit: . (18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law. (19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to RICHARD MENASCHE. I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full true name; SO HELP ME GOD.

Alien Registration No. 6 862 935

(S) RICHARD ISAAC MENASCHE.

3. *Affidavit of witness*

The following witnesses, each being severally, duly, and respectfully sworn, depose and say:

(1) My name is Charles J. Powell, my occupation is Capt. U. S. Army. I reside at HHA 117, Fort Buchanan, Puerto Rico and (2) My name is Frank J. Planas, my occupation is Manager. I reside at 119 Rodrigo Triata St., Hato Rey, Puerto Rico.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least 4-24-52 and 5-24-52 respectively; to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned; that the petitioner has been physically present in the United States for at least 12 & 13 months respectively of that period; and that he has re-

sided at San Juan in the State of Puerto Rico continuously since at least 4-24-52 and 3-24-52 respectively I have personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in the affidavit to this petition for naturalization subscribed by me are true to the best of my knowledge and belief. So help me God.

(S) CHARLES J. POWELL
*(Signature of Witness)*
(S) FRANK J. PLANAS
*(Signature of Witness)*

6 WHEN OATH ADMINISTERED BY CLERK OR DEPUTY CLERK OF COURT

Subscribed and sworn to before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of clerk of the said court at San Juan, Puerto Rico, this 24th day of April A. D. 1953.

MARY AGUAYO,
*Clerk.*
By (S) SARA S. PONS,
*Deputy Clerk.*

WHEN OATH ADMINISTERED BY DESIGNATED EXAMINER

Subscribed and sworn to before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit at this day of A. D. 19 .

*Designated Examiner.*

I hereby certify that the foregoing petition for naturalization was by petitioner named herein filed in the office of the clerk of said court at this day of A. D. 19 .

*Clerk.*

[SEAL]

*Deputy Clerk.*

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore

been a subject or citizen; that I will support and defend
7 the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; or that I will perform noncombatant service in the Armed Forces of the United States when required by the law; or that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so HELP ME GOD. In acknowledgment whereof I have hereunto affixed my signature.

_____
*(Signature of Petitioner)*

Sworn to in open court, this day of A. D. 19 .

_____
*Clerk.*

By _____
*Deputy Clerk.*

NOTE.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) in which I have heretofore belonged."

Petition granted: Line No. of List No. and Certificate No. issued.

Petition denied: List No. .

INTERROGATORIES IN DEPOSITIONS OF WITNESSES

STATE OF NEW YORK,
*County of N. Y., ss:*

MR. HERMAN J. GOLDEN being first duly sworn by me, deposed, testified, and said as follows:

8 1. Q. State your name, age, occupation, and address.—A. Name Herman J. Golden, age 21, occupation Exec. Columbia Pictures, address 8 Firethorne Lane, Valley Stream, L. I., N. Y.

2. Q. Where were you born? A. Brooklyn, N. Y.

3. Q. Are you a citizen of the United States? A. Yes.

4. Q. If you are a naturalized citizen, state when, where, and in what court you were naturalized and the number of your certificate. A. .

5. Q. If you claim citizenship through another person, explain fully, giving essential dates and relationship.—A. .

6. Q. Are you acquainted with the petitioner for naturalization Richard Isaac Menasche?—A. Yes.

7. Q. State when and where you first met the petitioner and how you came to meet him/her.—A. Shortly after he entered the U. S. on 3/7/48 for permanent residence, I met him in the office of Columbia Pictures of which I am an executive and he is sales exec. of our Belgium Subsidiary Company.

8. Q. Have you personally known him/her to be a resident of the United States?—A. Yes.

9. Q. State at what places in the United States you have known him/her to reside, and between what dates you knew him/her to reside at each place.—A. New York, N. Y., from Mar. 17, 1948, to Mar. 24, 1952. Moved to Puerto Rico.

10. Q. During his/her residence in such places, how long was he/she physically present there?—A. From 3/7/48 to 4/22/48; 3/5-27/49; 3/7-19/50; 3/5-19/51; and from 2/24/52 to 3/24/52.

11. Q. When did (s)he remove from N. Y., State of N. Y.? (This question refers to the city or town and State mentioned in the deposition notice.)—A. On 3/24/52 moved to Puerto Rico.

12. Q. Where did you reside during the time the petitioner lived in the city or town and State mentioned in question 11?—A. Brooklyn, N. Y., and Valley Stream, L. I., N. Y.

13. Q. How often did you see the petitioner while (s)he resided in the State mentioned in question 11?—A. Almost daily when he was physically present in N. Y.

14. Q. Since you first met him/her in the United States has (s)he ever been absent from the United States? (If so, give dates and facts.)—A. 4/22/48 to 3/5/49; 3/27/49 to 3/7/50; 3/19/50 to 3/5/51; and 3/19/51 to 2/24/52 in Belgium as our Belgium Subsidiary top man.

15. Q. Has the petitioner ever to your knowledge been arrested or charged with, or convicted of, a crime or a violation of law? (Give facts.)—A. No.

16. Q. Has the petitioner to your knowledge, behaved as a person of good moral character during all the time you have known him/her as a resident of the United States?—A. Yes.

17. Q. Has the petitioner ever been an anarchist, a believer in anarchy, or a member of or affiliated with any subversive organization, or with any body of persons teaching disbelief in or opposition to organized government?—A. No.

18. Q. Do you believe from your personal knowledge of the petitioner that during all the time you have known him/her as a resident of the United States (s)he has been attached to the principles of the Constitution of the United States and well

disposed to the good order and happiness of the United States?—A. Yes.

19. Q. Do you know of anything that might in your opinion disqualify the petitioner for citizenship?—A. No.

20. Q. Do you recommend the petitioner for citizenship?—A. Yes.

(S) HERMAN J. GOLDEN.

Subscribed and sworn to before me at N. Y., N. Y., this day of July 6, 1955. I Hereby Certify that the above-named witness established to my satisfaction that (s)he is a citizen of the United States and that his/her statements relate to the petitioner concerned.

(S) NINA H. IKAED.
*U. S. Naturalization Examiner.*

STATE OF NEW YORK,
*County of N. Y., ss:*

MR. BERNARD E. ZEEMAN being first duly sworn by me, deposed, testified, and said as follows:

1. Q. State your name, age, occupation, and address.—A. Name Bernard E. Zeeman, age 214, occupation Treas. Columbia Pictures Int-Company, address 181 Jones Rd., Englewood, N. J.

2. Q. Where were you born?—A. New York, N. Y.

3. Q. Are you a citizen of the United States?—A. Yes.

4. Q. If you are a naturalized citizen, state when, where, and in what court you were naturalized and the number of your certificate?—A.

5. Q. If you claim citizenship through another person, explain fully, giving essential dates and relationship.—A.

6. Q. Are you acquainted with the petitioner for naturalization Richard Isaac Menasche?—A. Yes.

7. Q. State when and where you first met the petitioner and how you came to meet him/her.—A. In Mar. 1948 when he came to U. S. for permanent residence as manager of our subsidiary Co., in Belgium.

8. Q. Have you personally known him/her to be a resident of the United States?—A. Yes.

9. Q. State at what places in the United States you have known him/her to reside, and between what dates you knew him/her to reside at each place.—A. New York, N. Y., from Mar. 7 1948, to Mar. 24 1952. Moved to Puerto Rico.

10. Q. During his/her residence in such places, how long was he/she physically present there?—A. From 3-7 to 4-22-1948; 3-5-27-49; 3-2-49-50; 3-5-49-51; and 2-24 to 3-24-52.

11. Q. When did (s)he remove from N. Y., State of N. Y.? (This question refers to the city or town and State mentioned in the deposition notice.)—A. Mar. 24 1952 he moved to Puerto Rico.

12. Q. Where did you reside during the time the petitioner lived in the city or town and State mentioned in question 11?—A. Englewood, New Jersey.

13. Q. How often did you see the petitioner while (s)he resided in the State mentioned in question 11?—A. During periods he was physically present in N. Y. I saw him almost constantly.

14. Q. Since you first met him/her in the United States has (s)he ever been absent from the United States? (If so, give dates and facts.)—A. 4/22/48 to 3/5/49, 3/27/49 to 3/7/50; 3/19/50 to 3/5/51; 3/19/51 to 2/24/52 in Belgium as Mgr. of our subsidiary Co. there.

15. Q. Has the petitioner ever to your knowledge been arrested or charged with, or convicted of, a crime or a violation of law? (Give facts.)—A. No.

16. Q. Has the petitioner to your knowledge, behaved as a person of good moral character during all the time you have known him/her as a resident of the United States?—A. Yes.

12 17. Q. Has the petitioner ever been an anarchist, a believer in anarchy, or a member of or affiliated with any subversive organization, or with any body of persons teaching disbelief in or opposition to organized government?—A. No.

18. Q. Do you believe from your personal knowledge of the petitioner that during all the time you have known him/her as a resident of the United States (s)he has been attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States?—A. Yes.

19. Q. Do you know of anything that might in your opinion disqualify the petitioner for citizenship?—A. No.

20. Q. Do you recommend the petitioner for citizenship?—A. Yes.

(S) BERNARD E. ZELMAN.

Subscribed and sworn to before me at New York, N. Y., this day of July 6, 1953. I hereby certify that the above-named witness established to my satisfaction that (s)he is a citizen of the United States and that his/her statements relate to the petitioner concerned.

(S) NINA H. IKARD.
*U. S. Naturalization Examiner.*

13 In United States District Court

*Transcript of hearing*

(Filed by leave of court January 11, 1954)

Be it remembered that this matter came on to be heard upon the Petition for Naturalization of Richard Isaac Menasche, No. 5308, on the 17th day of August 1953, before the Honorable Clemente Ruiz Nazario, United States District Judge, sitting at San Juan, Puerto Rico.

Appearances: For the United States, Eugene E. Cole, Esq., for the U. S. Immigration and Naturalization Service, and Ruben Rodriguez Antongiorgi, Esq., Assistant United States Attorney.

For the Petitioner: Tomas I. Nido, Esq.

Whereupon, the hearing of the petition was commenced, and testimony produced and proceedings had as follows, to wit:

*Colloquy between Court and counsel*

Mr. Cole. May I proceed, your Honor?

The Court. Yes.

Mr. Cole. In this case as in the other cases that we have had this morning preliminary examination was conducted by an examiner designated by the Immigration and Naturalization Service, and at such examination testimony was taken and evidence accepted into the record. The examiner has prepared a memorandum of findings of fact and conclusions of law, and recommendations which was supposed to be made and which is made at this time in this case. I therefore present the examiner's memorandum, with the exhibits mentioned therein. Those exhibits are No. 1 through No. 3. I request that they be accepted into evidence.

The Court. There has been only one recommendation in this case.

Mr. Cole. This is the first time this has been in court at all, your Honor.

14 Mr. Nido. Your Honor, in connection with this document, we certainly have no objection to the facts being admitted, as such. In other words, that portion of the Findings of Facts and Conclusions of Law and recommendations which are merely confined to statements of fact, we admit. As to the legal conclusions which flow from those facts, we do not admit.

The Court. That is for the Court. It is admitted and marked Exhibit No. 1 for the Government.

(The documents were then admitted in Evidence and marked Exhibit No. 1 for the Government.)

Mr. Cole. I believe then, your Honor, we are in agreement, Mr. Nido and I, that the facts are agreed upon and that the only question is a question of law.

The Court. As the Court understands this case, the position of the Immigration Authorities is to the effect that if this petition had been filed and the proceedings thereunder had been admitted under the Nationality Act of 1950, this petitioner would be entitled to citizenship; that the only question is the question as to the Savings Clause in the Nationality Act of 1952.

Mr. Cole. To my mind, your Honor, that is the only question. They seek to invoke the provisions of law before the new act came into effect, and particularly by reason of the Savings Clause.

The Court. There is no doubt that he could have been admitted as a citizen under the 1950 Act?

Mr. Cole. Yes, your Honor. We might have mentioned the absence of more than six months.

Mr. Nido. I believe what your Honor is driving at is whether the Immigration and Naturalization Service accepts that insofar as the requirements for naturalization under the old law, had the new law been in effect that Mr. Menasche has complied, or would have complied with all the requirements of a material character, such as residence, and so forth, and did not abandon his position by reason of repeated trips; in other words, if the new law is applicable to this petition, then because he was not physically present in the United States for one-half of the residential five year period required, the petition should be denied.

Mr. Cole. Yes. In other words, if it had come under the old law we would not have recommended denial, but we would have called attention to it. We would have recommended favorably.

The Court. So if it had not been for the Act of 1952, the recommendation would have been favorable?

Mr. Cole. That's right.

Mr. Nido. We would like to have the record show, your Honor, that the declaration of intention of the petitioner in this case was actually filed on April 16, 1948. There is a reference to such declaration of intention on page 2 of the Findings of Fact, but it merely says that he in fact prayed for and was issued a declaration of intention shortly after original entry, in order to avoid actual declaration. I am asking Mr. Cole to stipulate with me for the record that that declaration was actually issued on April 16, 1948.

Mr. Cole. It is agreeable to me.

The Court. Are you going to offer that in evidence?

Mr. Nido. I am going to stipulate for the record.

The Court. It is better to have the declaration of intention in evidence.

Mr. Nuss. All right. I will offer it then. We can always withdraw it.

The Court. That is admitted as Exhibit A for the Petitioner (The Document in Question was then admitted in Evidence as Petitioner's Exhibit "A.")

Mr. Nuss. Your Honor, in this case, as Mr. Cole has already stated, the basic facts are not in dispute. The only issue is whether the petitioner is entitled to naturalization at this time as of the date of the filing of the petition, by virtue of the fact that on the basis of the law there in effect he had not been resided physically in the United States for two and a half years. We must accept the facts to be as stated. Mr. Menasche on April 16th, or rather on April 24th when his petition was filed, had not yet been physically present two and a half years. On the other hand, we contend that the Immigration Act of 1952, by virtue of the Savings Clause, was intended and should be interpreted as having been intended to cover just such a case as Mr. Menasche's. While we are inclined to agree that mere hardship is not the basis for ignoring the mandatory provisions of Congress, we believe that Section 316 (a) in part (for the mandatory provision of Section 316 (a), which is the basis for recommending denial. In view of the fact that this Court will have to interpret the scope and effect of Sections 4 and 5 (a), it would at least be pertinent; but I believe we would like to have the record show that the hardship which would be imposed upon the petitioner, if this petition were to be denied, is so great as to possibly influence the Court in concluding that by the approval of Section 4 and 5 (a) Congress had in mind cases like this.

I would like to put Mr. Menasche on the stand to bring out more specifically the hardships as a result of recommending denial. Mr. Menasche is in Court and I will question him on that, if your Honor please.

The Court. Do you intend to file brief?

Mr. Nuss. Yes, your Honor, a short one.

The Court. I will give you five days for brief.

The Court. Is there going to be any testimony?

Mr. Nuss. Yes, very short.

The Court. All right.

RICHARD ISAAC MENASCHE, the Petitioner, upon called as a witness in his own behalf, was sworn and was examined, and testified as follows:

Direct examination by Mr. Nuss:

Q. What is your full name? A. Richard Isaac Menasche.

Q. Are you the petitioner in this case?—A. Yes.

Q. Of what country are you presently a citizen?—A. France.

Q. By birth or by naturalization?—A. Naturalization.

Q. What business are you in?—A. Executive of an American motion picture company.

Q. How long have you been engaged in that particular field, Mr. Munasche?—A. I have been in this field for the past 24 years, and manager in various countries for Columbia Pictures for the past fifteen years.

Q. Throughout that period of 24 years, where have you served in that capacity?—A. In the 15 years in my assignment with Columbia Pictures, or before?

Q. With Columbia pictures.—A. I was sent as supervisor for the Middle East for about nine years. However, I left my assignment for one year to join the French Forces during the war. However, the company kept the assignment open for me.

Q. How old are you?—A. Forty-seven.

Q. For the last 24 years you have been solely engaged in the motion picture industry?—A. That's right. I started at the very bottom of the industry, and joined Columbia Pictures in 1949, and the assignment has been so pleasant in the way I have been treated and handled, it has moved me so much that that is one of the main reasons why I began to get a strong feeling for the Americans and wanted to be one of them.

Q. According to the record, you first came to the United States under permanent resident visa sometime in March 1948. Now will you please state for the record precisely the facts surrounding that permanent visa and entry into the United States?—A. Well, I have a letter here from the Vice President of my company, whom I had written to in March, 1947, from Cairo, advising me that I had taken a very wise step, which was to apply for an immigration visa in Cairo and intended to become an American citizen.

Q. I take it that as early as March, 1947, you had taken that decision?—A. Yes, that is right. It was on my mind even during the war. However, I was waiting that conditions would permit me to get the company's authorization to come to the States.

Q. Why was it that although you got your visa in March 1947, you didn't come to the United States until 1948?—A. The reason is that the company at that time * * * I have a letter here pointing out that my desire to become an American citizen is very commendable * * *

Q. Please be brief.—A. Because my company at that time wanted to transfer me from Egypt to Belgium where they needed my services, where they wanted me to assume the management.

Q. It was for business reasons?—A. Business reasons, that's right.

Q. When you were finally authorized to come to the States in March, 1948, did you or did the company pay your expenses?—A. No, I had quite a hard time to get the company to approve my trip

to the States. As a matter of fact I even had reservations at one time and they cancelled them, and they thought I should get [illegible] an extension. They needed my services abroad. So finally, when I had such a hard time, and for one American citizenship meant so much to me, I advised that if the trip was not approved at my expense, I would resign.

Q. Was it then approved? A. It was approved provided all expenses were for my account, and I arrived in the United States on March 7, 1948 so as to establish permanent residence.

Q. You came at your own expense? A. Yes, and all trips I made at my expense.

Q. You were never reimbursed?—A. No.

Q. From the date of your entry in March, 1948, until the date on which you filed application for naturalization I do not want you to state anything now because that is in the report and we have stipulated as to the facts. You of course paid Federal income tax during the five years? A. Oh, yes. I pay income tax in the United States due to the fact that I came to establish residence for naturalization. It was obvious that I should also be a resident for income tax purposes, and I pay taxes in the States and even paid in the States on what I had paid in Belgium that didn't mean much, however—because I wanted one day to become an American citizen, which would make me very, very happy.

Q. From the record it appears that on December 24, 1952 when the new immigration act of 1952 went into effect, you had qualified for residence under the old law for four years, nine months and 16 or 18 days? A. Yes. I think, Mr. Nido, maybe you intend not mentioning it, but I would like to mention to the Court that under the previous law it was understood that if I had had absences of less than a year, and had maintained physical presence of one year in the United States, it was left up to the Court, provided my background and morals and so forth [illegible] were good, so Columbia Pictures has been very cooperative with me and they worked it out to send me for one year, from Belgium, which is a territory businesswise much more important than here, however they sent me here in a spirit of cooperation and also to help me out, and also considering that my services were satisfactory.

Q. Just how does the importance of the field in Belgium where you were manager compare with the Puerto Rican field? A. Well, the Puerto Rican field is usually a training ground, after which managership we are sent to Trinidad or to places in Latin America. Belgium has 2,000 cinemas, and Puerto Rico has 200.

Q. Are they paying you the same salary?—A. Yes. They didn't want to change my conditions because they figured I might

find myself another job. They didn't want to dishearten me, but wanted to be fair to me.

Q. If this petition were to be denied, Mr. Menasche, what would be the minimum consequences of your status?—A. Mr. Nido, I will answer to that or first I must add one thing, that for a number of years my company intends to use me in the foreign field, because they think I have more value to them because I know several foreign languages and foreign markets, and actually there is a very important position in our company where a man has retired, and which they have kept open for me for several months waiting for the Court decision on my citizenship, and if I get it I will get the assignment. The president told me recently that if the petition was denied it was up to me to make the choice, but he could not keep the job open any longer. I told him that American citizenship was the most important thing to me. But I am 47, and I cannot play around. There are certain things I can do, and others I cannot. I have acquired a reputation, and they have helped me out by sending me to Puerto
21 Rico. I have acquired four years and ten months under the old law. Now there is a new law, and if I have to be penalized * * *.

Mr. Nido. Don't be argumentative. Just state the facts. That's all, your Honor.

Cross examination by Mr. Cole:

X Q. Mr. Menasche, after you came to the United States in 1948 and before you departed * * *. I believe it was April 22nd of that year?—A. Yes.

X Q. Did you make application then or later to be exempt from residence in the United States?—A. I never made application to be exempt from residence in the United States for the simple reason that it was mentioned to me that absence of less than a year, more than six months but less than a year, may or may not break the required residence provided the petitioner can prove that he didn't intend to abandon residence, and I never intended to do so due to the fact that I paid income tax.

X Q. Did you make application later?—A. Oh, yes. Excuse me, I did make application for 307 B. I am sorry. And it was said to me that I had not acquired one year's physical residence at the time. That is why we worked it out with the company to do one year's residence.

X Q. In other words, you did not qualify under Section 307?—A. No. In 1949 or 1950 the company did apply for 307 B, which is a special permit approved by the Attorney General to reside abroad for more than a year without breaking the residence requirement.

X Q. If you had been granted the benefit of that section you would have remained abroad for more than a year?—A. That depends on the service or the requirements of my company. Requirements change very quickly. I was in Egypt and suddenly got a cable to go to Belgium.

X Q. Did you not say that you made a particular effort to come back before the expiration of the year?—A. That's right.

X Q. If you had been permitted to stay more than a year would the chances have been that you would have remained more than one year?—A. Yes, certainly. The purpose of the permit being applied for was precisely to stay out more than one year. It would have been easier for me, and I will tell you frankly because it is a question of economy. Trips to the States are very costly.

X Q. You were denied that?—A. Yes, because I didn't have one year's physical residence.

Mr. Cox. That's all.

(Witness excused.)

*Colloquy between Court and counsel*

Mr. Nino. I repeat to the court, I would like five days, not including today, to file a memorandum.

The Court. You will serve a copy on counsel?

Mr. Nino. Yes, I will.

The Court. And he will also have five days. I will take the matter under advisement. I want you to discuss in those memoranda this case. The Court is very much concerned about the Savings Clause. It says "Nothing contained in this Act, unless otherwise specifically provided thereon, shall be construed to affect the validity of any declaration of intention." This declaration of intention was made in 1948, and it would have entitled this petitioner under the former Nationality Act, provided he complied with all the other terms of the Act, to become a citizen after five years. That is, not less than two nor more than seven. That being the case, how can this petitioner be denied the status contemplated by that Saving Clause? Otherwise that mention of declaration of intention would be meaningless in the Saving Clause. There is another provision in regard to warrant of arrest, warrant of exclusion or other document or proceeding which shall be valid at the time this action took effect." This was valid and the proceedings initiated under this declaration of intention were valid when the act took effect. The Court doubts very much that that Saving Clause does not apply to this petition, and I must be frank to state it to this Immigration representative here. Otherwise, it doesn't mean anything. If we say that citizenship is a right or privilege and try to impress

that in the Saving Clause, then the Saving Clause would mean nothing and would have been put there for no purpose. Congress must have had a sound purpose in putting in that Saving Clause.

Mr. Cole. Your Honor, as to these three petitions this morning, I believe it is in order for me to present to the Court the recommendations of the Examiner and on the basis of these the Court will make the decision. I can make the Court order, if the court desires to enter an order on this separately or all together.

The Court. Well, after the Court arrives at a conclusion the Court will ask either the Department or the petitioner to prepare a form of order to be signed. If the Court is going to order the recommendation of the Immigration Service be approved and that the petition be denied, I will sign that form of order.

Mr. Cole. Very well. Then it will be in order for you to get the recommendation.

The Court. You may file that with your memorandum, or you may leave that with the Clerk.

The Court will adjourn until this afternoon.

(End of the Hearing.)

Certified to be a True and Correct Transcript.

(S) A. J. Perrone,
A. J. Perrone,
*Official Court Reporter.*

24 In United States District Court

*Exhibit I Immigration Service*

(Filed August 17, 1953)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE DESIGNATED NATURALIZATION EXAMINER

*To the Honorable, the Judge of the United States District Court for the District of Puerto Rico at San Juan:*

1. The undersigned, duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization, respectfully reports that the above named petitioner, a native of Belgium and subject of France, 46 years of age, who lawfully entered the United States for permanent residence on March 7, 1948, filed a petition for naturalization under the general provisions of the Immigration and Nationality Act on April 24, 1953.

The questions presented are:

(1) Whether the petitioner has established continuous residence in the United States for the period required by law, that is since April 24, 1948; and

(2) Whether the petitioner has established physical presence in the United States for the period required by law.

2. The petitioner and his verifying witnesses were accorded a preliminary examination on April 24, 1953, the date the petition was filed, at which time sworn statement (Exhibit III) was obtained. The petitioner alleged in his petition and at the preliminary examination that following his lawful entry into the United States for permanent residence on March 7, 1948, he was absent from the United States for more than six months as follows:

April 22, 1948 to March 5, 1949
March 27, 1949 to March 7, 1950
March 19, 1950 to March 5, 1951
March 19, 1951 to February 24, 1952

25 He also stated that he had been absent from the United States for periods of less than six months as follows:

June 17, 1952 to June 24, 1952
January 5, 1953 to January 7, 1953

The petitioner alleged in his preliminary application to file petition for naturalization (Exhibit I) that since 1939 he had been employed by Columbia Pictures International, an American business corporation, and that his absences abroad were occasioned or necessary in connection with his employment by that corporation which was at all times engaged in the promotion of foreign trade and commerce of the United States; that he was absent from the United States at no time for one year or more and that on each occasion he was properly readmitted to the United States on the basis of a re-entry permit issued by the Immigration and Naturalization Service. At the request of the petitioner, there was entered into the record at the preliminary examination an affidavit (Exhibit II) of an official of the Columbia Pictures International Corporation testifying to petitioner's employment in that organization since 1939, and that he was employed or performed his duties abroad in the interests of that corporation, distributing throughout the world the motion pictures produced by it in the United States; also, that the organization by which petitioner was employed arranged his services outside the United States so as to permit him to return to this country so as to retain residence for naturalization purposes. As a summary, petitioner acknowledged that during the 5 year period immediately preceding the date of his petition, he had been absent from the United States a total of forty-four months and had been physically present in the United States a total of sixteen months.

26 3. The provisions of the Immigration and Nationality Act as to the requirements of residence and physical presence in the United States are to be found in Section 316 (a) which reads in part as follows:

> SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time. * * *.

That part of the Act relating to absences from the United States is to be found in sub-paragraph (b) of Section 316 which reads:

> (b) Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, unless the petitioner shall establish to the satisfaction of the court that he did not in fact abandon his residence in the United States during such period.

During the period for which petitioner is required to establish continuous residence, he was absent on four occasions for periods in excess of six months but less than one year. He has testified and the evidence establishes that during such periods he was abroad in the employ of an American corporation or subsidiary thereof, and in connection with such employment was engaged in the
27 development of the foreign trade and commerce of the United States. Petitioner claimed that he had no intent of abandoning his residence in the United States, that he in fact applied for and was issued a declaration of intention shortly after his original entry, that in connection with each absence he applied for and obtained a permit with which to re-enter the United States, that he made special and particular effort to return to the United States prior to the expiration of one year, and that during all of his absences he continued to pay income tax in this country. It is therefore believed that the petitioner will be able to establish to the satisfaction of the Court that he did not in fact abandon his residence in the United States during the time that he was absent from this country for more than six months.

As to the provisions of Section 316 (a) quoted above regarding the physical presence requirement, it is evident that if this provision of law is to be construed as read without exception that the petitioner was not physically present within the United States for at least one-half of the 5-year period immediately preceding the date of his petition. In this connection the petitioner

first contends that under an equitable interpretation of Section 405 (a) of the Immigration and Nationality Act, the Savings clause, that his right should be determined under the law which was in effect at the time he acquired a permanent resident status in the United States. The Saving Clause referred to by petitioner provides in part:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or part of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

Section 316 (a) of the Immigration and Nationality Act does not "specifically provide otherwise" and it would therefore follow that the Savings Clause contained in Section 405 (a) would apply if there was a cause stated within the clause. While not so specifically stated, it is believed that the petitioner seeks the benefit of this Savings Clause which reads that nothing contained in the Act shall be construed to affect the validity of "any status, condition, right in process of acquisition, done or existing, at the time this Act" took effect. Certainly it cannot be concluded that subject had any status or right in process of acquisition which would have been in existence as entitling him to be a citizen at the time of the passage of the Immigration and Nationality Act. He had the right of a person lawfully admitted for permanent residence with the hope of being able to acquire the qualifications necessary for naturalization. He had no "right" to citizenship, as citizenship is to be construed as a privilege and not a right. Moreover, had Congress intended to allow an exemption from the physical presence requirement in such class of cases, it would have so provided by statute. To the contrary in dealing with the classes who might be permitted to remain outside the United States for more than one year without breaking the continuity of residence, as provided in Section 316

(b) of the Immigration and Nationality Act, it was specifically provided in sub-paragraph (c) of that Section:

> (c) The granting of the benefits of subsection (b) of this Section shall not relieve the petitioner from the requirement of physical presence within the United States for the period "specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. * * *

Provisions were also contained in Section 307 (b) of the Nationality Act of 1950, which have been repealed and superseded by Section 316 (b) of the Immigration and Nationality Act, whereby an individual meeting certain requirements and upon proper application could have been exempt from the residence requirements and permitted to remain abroad in excess of one year. If such benefits had been granted it is possible that the recipient thereof could be considered to have a "right in process of acquisition" at the time the Immigration and Nationality Act became effective, as provided in the Savings Clause, Section 405 (a). However, such superseded law requires among other things that the applicant for the benefits thereof reside in the United States for a period of at least one year before being eligible to make application. It is evident that the petitioner in the instant case could not have acquired such year's residence inasmuch as he was not admitted to the United States for residence until March 7, 1948, and thereafter was absent almost continuously from April 1947 until February 1952. It is apparent that petitioner intended to comply with the requirements of the law for naturalization purposes and if the law had not been changed that he possibly would be eligible for naturalization at this time. It is manifest that the change of legislation visits a hardship upon the petitioner who had relied upon the previous Congressional pronouncement. That hardship alone would not justify departure from a Congressional mandate, formulated in the exercise of sovereign prerogatives, if a legislative purpose is clearly articulated. Harisiades v. Shaughnessy, 342 U. S. 580 (1952); Chinese Exclusion Case, 130 U. S. 581 (1889).

The petitioner's second and alternative contention is that if his eligibility to naturalization is not saved by Section 405 (a) of the Immigration and Nationality Act, that he should be accredited with the residence earned by him under the provisions of the old Nationality Act and that he should be required to comply with the provisions of the new Act only since the effective date of that Act, to wit, December 24, 1952. It is admitted that he could comply with the physical presence requirement in that he has resided physically in the United States for more than one-half of the time since that date. However, as stated beforehand, sub-

just had no vested status or right prior to the effective date of the Immigration and Nationality Act, and no provision was made to waive the physical presence requirement as to residence theretofore earned. Even though it would appear to visit a hardship in some cases, it is evident that such was known to and the intent of Congress.

It must therefore be concluded that the petitioner in the instant case has not complied with the physical presence requirement of Section 316 (a) of the Act.

4. Pursuant to the provisions of Section 335 of the Immigration and Nationality Act, I hereby make the following findings of fact and conclusions of law:

31 FINDINGS OF FACT

(a) That the petitioner is an alien and filed a petition for naturalization on April 24, 1953;

(b) That within the 5-year period immediately preceding the date of filing, the petitioner was absent from the United States on four occasions in excess of six months but less than one year;

(c) That the petitioner did not in fact abandon his residence in the United States during such periods of absence;

(d) That during the 5-year period immediately preceding the date of the petition, the petitioner was physically present in the United States for a total of 16 months and absent from the United States for a total of 44 months.

CONCLUSIONS OF LAW

(a) That the petitioner has established continuous residence in the United States for the period required by Section 316 (a) of the Immigration and Nationality Act;

(b) That the petitioner has failed to establish physical presence in the United States for the period required by Section 316 (a) of the Immigration and Nationality Act;

(c) That under Section 316 (a) of the Immigration and Nationality Act the petitioner may not be naturalized.

5. I recommend that this petition for naturalization be denied on the ground that the petitioner has failed to establish physical presence in the United States for the period required by law.

Respectfully submitted,

(S) DAVID L. STOLLS,
*Designated Naturalization Examiner.*

Date:

32 *Exhibit No. 1 to Exhibit 1*

Form N-400
United States Department of Justice
Immigration and Naturalization Service
(Rev. 12-24-52)

Form approved.
Budget Bureau No. 42-R079.6.

ALIEN REGISTRATION

RICHARD ISAAC MENASCHE

No. 6862935

Mail or take to:
Immigration and Naturalization Service,
P. O. Box 2830, Miami, Florida.

APPLICATION TO FILE PETITION
FOR NATURALIZATION

I desire to file a petition for naturalization in the U. S. District Court at San Juan, Puerto Rico.

Richard Isaac Menasche, c/o Columbia Pictures, P. O. Box 422, San Juan, Puerto Rico.

INSTRUCTIONS TO THE APPLICANT

Important: Under the naturalization laws, citizenship may be revoked for concealment of a material fact or for willful misrepresentation in connection with the naturalization proceedings. It is important therefore that you fill out pages 1, 2, 3, and 4 of this form completely and as accurately as possible, using ink or a typewriter. If you do not have enough room to answer a question, continue your answer on another sheet of paper and show the number of the question you are continuing.

Photographs: You must send with this application three identical photographs of yourself taken within 30 days of the date of this application. These photographs must be 2 by 2 inches in
33 size, and distance from top of head to point of chin should be approximately 1¼ inches, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. *Do not sign your photographs.*

Date of Your Arrival: If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, give the facts as you remember them.

If the date of your arrival in the United States was on or before June 29, 1906, you should submit with this application documen-

tary evidence of your residence in the United States prior to that date. Such documents may be family Bible entries, deeds of record, wills or other authentic legal documents, life insurance policies, bankbooks and records, employment records or other documents showing that you were in the United States on or before June 29, 1906. Do not submit such documents if your arrival in the United States was after June 29, 1906.

Alien Registration Receipt Card: It is important that you show, inside the boxes appearing at the top of pages 1 and 3 of this form, the exact spelling of your name as it appears on your alien registration receipt card and the number of your card. As the law requires you to carry such card with you at all times, *do not send* your alien registration receipt card with this application.

(1) In what places in the United States have you lived during the last 5 years?

ANSWER TO QUESTION NO. 1

I have been employed in an executive capacity with a wholly owned subsidiary of Columbia Pictures International, an American business corporation, since 1939. On March 7, 1948 I entered the United States under a *visa* for permanent residence. Since then I have been a legal U. S. resident and have been required to occupy managerial positions for the said company as
34 follows: (a) From March 7, 1948 to April 22, 1948 I physically resided in New York City, % Joe Siritsky, #90 Riverside Drive. From April 22, 1948 to March 5, 1949 I was stationed in Brussels, Belgium as Manager for Belgium of the above company. (b) From March 5, 1949 to March 27, 1949 I physically resided in New York City, % the same address mentioned. From March 27, 1949 to March 7, 1950 I continued to occupy the above mentioned position in Brussels, Belgium. (c) From March 7, 1950 to March 19, 1950 I physically resided in New York City, % Columbia Pictures International, #729 - 7th Avenue. From March 19, 1950 to March 5, 1951 I resumed my managerial position with the company in Brussels, Belgium. (d) From March 5, 1951 to March 19, 1951 I physically resided in New York City, % Columbia Pictures International, #729 - 7th Avenue. From March 19, 1951 to February 24, 1952 I occupied the same managerial position with the company in Brussels, Belgium. (e) From February 24, 1952 to March 24, 1952 I stayed at the Hotel Mayflower #15 Central Park West, New York City. (f) From March 24, 1952 to this date I have physically resided in San Juan, Puerto Rico, % Columbia Pictures of Puerto Rico, Inc., Box 422, San Juan. I visited the Dominican Republic in the course of my employment as Manager for the

Puerto Rico, Virgin Islands, Dominican Republic and Haiti area of the said Company, from June 17 to June 21, 1952 and from January 5 to January 7, 1953.

SPECIAL NOTE. Since my legal entry in 1948, I have been a U. S. taxpayer and have paid substantial income taxes to the Federal Government. I filed my Declaration of Intention to become a citizen on April 16, 1948 before William V. Connel, U. S. District Court Clerk for the Southern District of New York, under the No. 586981. My absences from the U. S. have always been for less than one year, properly authorized by a re entry permit, and my absences have always been necessary at the request of and in order to represent a bona-fide American corporation engaged in the development of foreign trade and commerce.

(2) What were the names, addresses, and occupations (or types of business) of your employers during the last 5 years?

ANSWER TO QUESTION NO. 2

During the past 14 years I have been continuously employed in an executive capacity with Columbia Pictures Near East Ltd., from January 1, 1939 to July 1947, located in Cairo, Egypt, and with Columbia Film S. A. B. from July 1947 until February 15, 1952 located in Brussels, Belgium. From February 24, 1952 till March 24, 1952 I worked in the offices of Columbia Pictures International, 729 Seventh Avenue, New York City. Since March 24, 1952 I have been Manager for Columbia Pictures of Puerto Rico Inc., located at San Juan, Puerto Rico. All of the above corporations have at all times been wholly owned subsidiaries of Columbia Pictures International of New York, New York, an American corporation which has at all times been engaged in the promotion of foreign trade and commerce.

(3) How many times have you been married? 1. How many times has your wife been married? 2. If either of you have been married more than once, fill in the following information for each previous marriage.

Date Married: March 10, 1937.
Date Marriage Ended: May 13, 1945.
Name of Person to Whom Married: Avram Friedman.
Person Married Was Alien.
How Marriage Ended: Divorce.

(4) Have you ever been an inmate of an insane asylum or similar institution or have you ever been treated for any mental illness? No.

(5) Have you ever, in the United States or in any other country, been arrested, charged with violation of any law or ordinance,

summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation or parole, or forfeited collateral for any act involving a felony, misdemeanor, or breach of any public law or ordinance? No.

(6) Has a warrant of arrest in deportation ever been issued against you or have you ever been deported or ordered deported or are deportation proceedings pending against you? No.

(7) What organizations in the United States or in any other country have you been a member of during the last 10 years? None.

(8) What organizations in the United States or in any other country have you been a member of during the last 10 years? None.

(9) Do you owe a tax of any kind to the Federal Government? No.

(10) Have you ever filed a Federal Income Tax Return? Yes. If "Yes" give the last year filed: 1952—Partial return before leaving for Puerto Rico.

(11) Have you ever voted or otherwise represented yourself to be a United States citizen? No.

(12) Was your father or mother ever a citizen of the United States? No.

(13) Have you ever been registered and fingerprinted under the Alien Registration Act of 1940 or any other later Act? Yes. If "Yes" write the number of your Alien Registration Receipt Card inside the boxes at the top of pages 1 and 3, and the exact name shown on the card.

(14) If male, did you register under the Selective Service Law of 1917, 1918, 1940, 1948, 1951 or later Draft laws? No. Were you ever exempted from service because of conscientious objections, alienage, other? No. (1).

(15) If you ever served in the Armed Forces of the United States, state branch (Army, Navy, etc.); from , 19 to , 19 ; Service No. ; type of separation (Honorable, Dishonorable, etc.); reason for separation, alienage, conscientious objections, other ?

(16) If the law requires it, are you willing (a) to bear arms on behalf of the United States? Yes, (b) to perform noncombatant services in the Armed Forces of the United States? Yes; (c) to perform work of national importance under civilian direction? Yes.

(17) Have you ever deserted from the military or naval forces of the United States while this country was at war? No. Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? No.

(18) Are you now or have you ever (Answer "Yes" or "No") (a) been a habitual drunkard? No; (b) derived income principally from illegal gambling activities? No; (c) given false testimony to obtain benefits under the immigration or naturalization laws? No; (d) been a polygamist or practiced or advocated polygamy? No; (e) been a prostitute, or engaged in or received support or the proceeds from prostitution, or procured or imported or attempted to procure or import persons for prostitution or any other immoral purpose, or come to the United States to engage in any other unlawful commercialized vice? No; (f) knowingly and for gain encouraged or aided any alien to enter the United States illegally? No; (g) committed a crime involving moral turpitude? No.

38 Alien Registration: Richard Isaac Menasche, No. 6862935.

STATEMENT OF FACTS FOR PREPARATION OF PETITION

(1) My full, true, and correct name is Richard Isaac Menasche.

(2) My present place of residence is 52 Calle Los Banos, San Juan, Puerto Rico.

(3) My occupation is Manager of Columbia Pictures of P. R. Inc.

(4) I am 46 years old.

(5) I was born on September 19, 1906 in Antwerp, Belgium.

(6) My personal description is as follows: Sex, Male; Complexion, Fair; Color of eyes, Brown; Color of hair, Black; Height 5 feet 6 inches; Weight, 175 pounds; visible distinctive marks, none; country of which I am a citizen, subject or national—France.

(7) I am married; the name of my wife is Frieda Menasche; we were married on September 21, 1945 at Cairo, Egypt; she was born at Seret, Rumania on December 28, 1915; entered the United States at New York, N. Y. on March 7, 1950 for permanent residence in the United States and now resides at San Juan (with me), Puerto Rico; and was naturalized on (Month—Day—Year) at (City—Town—State); certificate No. , or became a citizen by (3).

(8) I have no children.

(9) My lawful admission for permanent residence in the United States was at New York, New York, under the name of Richard Isaac Menasche, on March 7, 1948, on the Plane, No. 9827. (4)

(10) Since such lawful admission, I have not been absent from the United States for a period or periods of 6 months or longer except as follows:

39 DEPARTED FROM THE UNITED STATES

| Port | Date (Month, day, year) | Vessel or other Means of Conveyance |
|---|---|---|
| New York, N. Y. | April 22, 1948 | By plane |
| New York, N. Y. | March 27, 1949 | By plane |
| New York, N. Y. | March 19, 1950 | By plane |
| New York, N. Y. | March 19, 1951 | By plane |

RETURNED TO THE UNITED STATES

| Port | Date (Month, day, year) | Vessel or other Means of Conveyance |
|---|---|---|
| New York, N. Y. | March 5, 1949 | By plane |
| New York, N. Y. | March 7, 1950 | By plane |
| New York, N. Y. | March 3, 1951 | By plane |
| New York, N. Y. | Feb. 24, 1952 | SS Queen Mary |

(11) I have resided continuously in the United States of America since March 7, 1948 and continuously in the State of Puerto Rico where I now live since March 24, 1952 and during the past 5 years I have been physically present in the United States for an aggregate period of 16 months (XX).

(12) I have not heretofore made petition for naturalization.

(13) I wish the naturalization court to change my name to Richard Menasche.

To the Applicant: Do not write between the double lines below:

(1st witness) (S) Capt. Charles J. Rowell, U. S. Army, residing at [illegible] (illegible), P. R.

(2d witness) Frank J. Pravas, Mgr. residing at 112 Rodrigo Triana, Hato Rey

United States 4 24 & 3 24 52. State 11. Physical presence 12 & 13 mos. Examiner [illegible] (illegible)

XX—Memorandum regarding answer to Question No. 11

Petitioner believes that he has complied with all requirements as to residence and is qualified to make this application.

40 It is the contention of your petitioner that although he has only been physically present in the United States approximately 16 months, as stated in the petition, and under Section 316 of the New Immigration and Nationality Act which became effective on December 24, 1952, if applicable, not less than 30 months physical presence is required, your petitioner maintains that under an equitable interpretation of the Savings Clauses of the new Act, § 405 (a), his rights should be determined under

the provisions of law in effect at the time that he qualified for permanent residence.

In the alternative, petitioner contends that the term of residence already earned by him under the provisions of the old law up to the date when the new Act went into effect (approximately 4 years and 9 months) should be credited to him, and that in any event, only the balance of the five year residential requirement still to run should be governed by the physical presence requirements contained in the new law. Inasmuch as petitioner has been physically present in the United States (Puerto Rico) since December 24, 1952, he has fully met that condition.

(14) My father's full name was Leon Menasche.

(15) My mother's maiden name was Eugenie Namer.

(16) My last place of foreign residence was #40 Rue Louis Hymans, Brussels, Belgium.

(17) I emigrated to the United States from the port of London, England.

(18) The person in the United States to whom I was coming was _____. To establish permanent residence.

(19) The place in the United States to which I was going was New York City, N. Y.

(20) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are:

11 (S) RICHARD ISAAC MENASCHE.

Date: March 21, 1953 % Columbia Pictures, P. O. Box 132, San Juan, P. R.

To Applicant: Do not fill in blanks below this line.

NOTE CAREFULLY.—This application must be sworn to before an officer of the Immigration and Naturalization Service at the time you appear before such officer for examination on this application.

AFFIDAVIT

I, Richard Isaac Menasche, do swear (affirm) that I know the contents of this application comprising pages 1 to 4, inclusive, and the supplements thereto, Forms No. _____, subscribed to by me; that the same are true to the best of my knowledge and belief, and that corrections numbered (1) to (11) were made by me or at my request, and that this application was signed by me with my full, true, and correct name.

(S) RICHARD ISAAC MENASCHE.

Subscribed and sworn to before me by the above-named applicant at the preliminary interrogation (examination) at San Juan, P. R. this 24th day of April, 1953. I certify that the

above applicant stated in my presence that he had (heard) read the foregoing application and understands the contents thereof, before verification.

(S) DAVID L. SCOTT,
*Actg Nat. Exam.*

RECORD FOUND

Verified as alleged.
Date: 3-31-55.

(S) MAGGIE L. BELL.

42 *Exhibit No. II to Exhibit I*

AFFIDAVIT

STATE OF NEW YORK,
CITY OF NEW YORK,
*County of New York, ss:*

FRANCIS E. ZUCKER, having first been duly sworn deposes and says:

1. This affidavit is being made in connection with the application of Mr. Richard Isaac Menasche for American Citizenship.

2. The deponent is the Treasurer of the Columbia Pictures International Corporation (hereinafter called "International"). Mr. Menasche has been continuously employed since January 1, 1950 by International or by International's parent company, Columbia Pictures Corporation (hereinafter called "Columbia"). International is a Delaware corporation and Columbia is a New York corporation. International is engaged in the distribution throughout the world outside of the United States of motion pictures produced in the United States by Columbia.

3. At all times since Mr. Menasche came to the United States in 1948 for the purpose of becoming an American citizen, he has been employed by International continuously as a senior sales executive with important duties and responsibilities. By direction of International he has performed his duties and rendered his services outside of the United States because we believed that his greatest value to us was in the foreign field. Most recently during this period he has been assigned to the Puerto Rican office in San Juan in charge of said office.

4. At all times since Mr. Menasche came to the United States in 1948 he has emphasized that he would not remain outside of the United States for any period of time which might interfere with or delay his becoming an American citizen. To that end the places and period of time set for the fulfillment of his services outside of the United States and the times when he might return to this country for the purpose of renewing his residence, in connection with his application for citizenship, were always fixed to meet the requirements of his residence in the

United States as understood by Mr. Menasche and communicated by him to us.

5. By reason of and in the course of said employment, deponent has had the opportunity to form and has formed an opinion of Mr. Menasche's character and ability. In the opinion of deponent Mr. Menasche's character is excellent and his ability of high quality; we have found him honest, efficient, and intelligent. He has performed his services in a meritorious manner and we consider him a valuable sales executive, especially in the foreign field. We also believe that he will make a good, desirable and loyal American citizen and we hope for him that his application will be granted as soon as possible.

Sworn to before me this 19th day of March, 1953.

(S) Arthur Peckoff.
ARTHUR PECKOFF.
*Notary Public, State of New York.*

[SEAL]

No. 03-8312400. Qualified in Bronx County. Certificates filed with New York and Bronx County Clerks and Register's Offices. Commission Expires March 30, 1954.

(S) B. E. Zeeman,
BERNARD E. ZEEMAN.

44 *Exhibit No. III to Exhibit I*

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

P. O. Box 1986

San Juan 9, Puerto Rico

File No. A-6 862 935
(2849-P-5308)

PRELIMINARY EXAMINATION ON PETITION FOR NATURALIZATION

Date: April 24, 1953.
Place: San Juan, Puerto Rico.
Petitioner: Richard Isaac Menasche.
Designated Examiner: David L. Scoles.
Stenographer: Manuela S. de Mendez.
Witnesses: Charles J. Powell and Frank J. Planas.

Examiner to Petitioner:

Q. Are you able to speak and understand the English language?—A. Yes.

Examiner to Witnesses:

Q. And do you speak and understand the English language?—A. Yes.

Examiner to Petitioner and Witnesses:

Q. You are informed that this is a preliminary examination on the petition for naturalization of Richard Isaac Menasche as a citizen of the United States. I am presiding at this examination as a naturalization examiner designated under the Immigration and Nationality Act of 1952. As such I am authorized by law to take testimony concerning any matter touching on or affecting in any way the the admissibility of any petitioner for naturalization. Do you understand?—A. Yes.

Q. Will the three of you please stand and be sworn. (Petitioner and witnesses comply.) Do you solemnly swear that the statements you are about to make at this time will be the truth, the whole truth and nothing but the truth, so help you God?—A. Yes.

Q. I will now read to you the contents of this petition. (Petition read to petitioner and witnesses by examiner) You have heard the petition read. Are all the statements contained therein true to the best of your knowledge and belief?—A. Yes.

Examiner to Witnesses:

Q. The two witnesses, both American citizens, recommend the petitioner Richard Isaac Menasche for American citizenship?—A. Yes.

Q. Neither of you know any reason why he should not be an American citizen?—A. No.

Q. I am about to conduct a further examination as to the question of Mr. Menasche's physical presence in the United States. You may remain if you wish, or you may leave.—A. We will go now.

Examiner. Witnesses are excused.

Examiner to Petitioner:

Q. You are advised that I am about to discuss the question of your physical presence in the United States and other matters relating to your petition. You have the right to be represented by counsel of your own choice and at your own expense. Such counsel may be an attorney at law or other person qualified to practice before the Immigration and Naturalization Service. Do you desire so to be represented?—A. I think I will do it myself. Do I have the right to have a lawyer at y time I want?

Q. You may request the right of having a lawyer at any time and the hearing will be stopped to permit you to get an attorney. Do you understand?—A. Yes.

Q. You are advised that you have the right to offer evidence to meet any evidence presented or adduced by the government and to cross-examine witnesses if there be any. As Designated Examiner, I shall rule on all objections to the introduction of evidence but any evidence ruled inadmissible shall

nevertheless be received into the record, subject to the ruling of the court. Is that understood?—A. Yes.

Q. If you wilfully and knowingly tell a lie in this proceeding as to anything which is important to the decision to be made, you may be prosecuted for perjury, the penalty for which is imprisonment of not more than five years or a fine of not more than $2,000 or both such fine and imprisonment. Do you understand?—A. Yes.

Q. The purpose of this part of the hearing is to give you an opportunity to present any evidence or argument which you may wish concerning the question of physical presence in the United States. According to your sworn statements on the petition you entered the United States March 7, 1948. Since that time you have been absent from March 22, 1948 to March 5, 1949; from March 27, 1949 to March 7, 1950, from March 19, 1950 to March 5, 1951 and from March 19, 1951 to March 24, 1952. These were all absences of more than six months .—A. That's right, but less than a year, which were the regulations at the time.

Q. I also find that since your entry February 24, 1952, you have again been absent. I have a record of your departure June 17, 1952 at San Juan, Puerto Rico and your return June 21, 1952. Is that a correct statement of your absence?—A. It is, I went to Santo Domingo and Haiti.

Q. I also have a record of your return to the United States January 7, 1953 .—A. I went to Santo Domingo for two days.

47 Q. Then you have been, in addition, absent from the United States six days beyond the amount shown on the petition?—A. Yes, six days.

Q. Then, according to the record, you have been absent from the United States during the last five years a total of between forty-four and forty-five months. Is that correct?—A. Yes.

Q. And then you have been physically present in the United States between fifteen and sixteen months of the past sixty months. Is that correct?—A. Up to this date it is sixteen months.

Q. I wish to read to you a portion of the Immigration and Nationality Act of 1952. Section 316 (a) of the Immigration and Nationality Act of 1952 reads as follows:

> SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half

of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

That is the reading of Section 316 (a) of the Immigration
48 and Nationality Act of 1952. Do you have any evidence or argument to present as to any reason why your petition should not be denied on the ground that you have not been physically present in the United States for at least one half of the last five years?—A. Yes, I have, sir.

Q. You may proceed.—A. I wish to enter as an exhibit in this record an affidavit of March 19, 1953, by Mr. Bernard E. Zeeman, Treasurer of Columbia Pictures International.

Q. It will be entered as Exhibit H and may I state for the record that there will be entered also, as Exhibit I, your application containing your statements in applying for permission to file a petition and carrying four supplementary answers. This will be marked Exhibit I. You may proceed.—A. I wanted to come to the United States in November, 1947, and I had my reservation made at that time. If I had come at that time I would be finding myself today able to file in November last and not affected by any new act. I would come under the previous law. However, Columbia Pictures cancelled my reservation because they needed my activities in Belgium at the time and asked me to secure an extension, which I did. I obtained an extension of six months. The American Consul in Antwerp gave me a new immigration visa which shown on my passport which I actually have and when the six months expired Columbia Pictures cabled me that due to world wide conditions, in spite of the fact that I was paying for my trip to the States—at my own expense—that they could not approve my trip to come to the States in order to establish residence and take out first papers. To that effect I told them I was very sorry and in spite of the very important position that I had in the company I resigned. When I gave them my resignation I got a cable from them which I show you now, Mr. Scoles, dated the
49 27th of February reading "Trip approved provided all expenses your account."

(Note by Examiner: Cable read and returned to petitioner.)

Q. Mr. Menasche, your answer to question 11 of the application to file a petition, such application being Exhibit I of this hearing,

states that you rely on Section 405 (a) of the new Act, the savings clause.—A. Yes, that is what my attorney put in.

Q. Section 405 (a) of the Immigration and Nationality Act of 1952, which became effective December 24, 1952, reads as follows:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal; done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.

Is it your contention, then, that in so far as your petition is concerned, the Nationality Act of 1940 continues in force and effect?—A. Yes. It is my contention that when my company finally approved my trip to the States I came over at my expense, took out my first papers and was constantly guided during the four year period according to the laws in effect at that time. I knew I could be absent each year less than a year working for an American company abroad inasmuch as I had my papers and I paid income tax as a resident in the United States, which was a heavy burden on me because I was paid in Belgium and I paid income tax in the States on my earnings in Belgium—I was paying double taxation. But my desire to become a citizen of the United States was so strong that nothing could stop me. That is one of the reasons why the company has backed me up and gone through all the trouble of transferring me from Belgium to Puerto Rico to get the required residence to meet the requirements of the law then in effect. Now I am a little upset that I still cannot have definite assurance in regard to my status.

Q. Your application to file a petition for naturalization Exhibit 1 of this hearing, shows that it was received by our Service at Miami, Florida, March 26, 1953. Is that correct?—A. That is correct, sir.

Q. You have also advanced an alternative in your answer to question 11 of Exhibit 1, that of your contention that Section 405 (a) of the Immigration and Nationality Act does not apply, the

term of residence already earned by you under the provisions of the old law to the date when the new Act went into effect, or approximately four years and nine months, should be credited to you, and that, in any event, only the balance of the five year residential requirement still to run should be governed by the physical presence requirement contained in the new law. Your statement is
51 that since you have been physically present in the United States (Puerto Rico) since December 24, 1952, you have fully met that condition. Is that your present contention?—A. Yes.

Q. Have you anything else to offer?—A. No, the only thing I can say is that I believe that a man that has met all the requirements of a previous law, that has first papers and was guided according to a previous law and guided his life accordingly, and has four years and ten months today of residence acquired under the previous law, I think up to the investigator to find out whether two months have to affect me and have to delay my case. It is not up to me to judge that but I think, if I may say so, if the authorities find out that my background is good, that I am no Communist, and that I am an honorable man I am certainly entitled to United States citizenship, after all the good will I have shown, the tremendous financial expenses on all of these trips, and I think that a man who has not a stateless status, because I have a French passport, I only think it can prove that my feelings are entirely in favor of the United States. More than that I cannot prove. I leave it to the judge to prove whether I am entitled to it or not.

Q. It should also be noted for the record that Exhibit H, which was entered as an exhibit of the record earlier in this examination, is a statement by an officer of Columbia Pictures International that the petitioner has been continuously employed by that corporation or its parent company, both American companies, since 1939 and that his absences since 1948 have been at the direction of that company. Exhibit H also states that the petitioner since coming to the United States in 1948 has manifested that he would not remain outside of the United States for any period of time which might interfere with or delay his becoming a citizen of the United States. Exhibit H also contains a high recommendation as
52 to the petitioner's character and ability. Do you have anything further to enter in the record or to state for the record?—A. No, the only thing that I want to say is that I hope that you can get a prompt decision on this because the main reason why my company wanted to send me to Puerto Rico was just to fulfill the required residence for the purposes of citizenship, and due to the fact that I have been twenty four years in this industry they want to use me for more important responsibilities than the

ones I am assuming over here. I feel a little bit embarrassed because I do not want to be a burden to the company, remaining here in Puerto Rico because I am sure they can find a young man who can do the job here just as well. I believe that is also their feeling and I can serve them in a bigger field.

Q. Mr. Menasche, before a final hearing can be had on your petition it will be necessary to secure the depositions of two witnesses as to your qualifications while a resident of New York, N. Y., from April 1, 1948 until March 24, 1952. When those depositions have been secured final decision will be reached in your case as to the recommendation to be made by this Service and you will be furnished with a copy of the Findings of fact, conclusions of law and the recommendation which this Service proposes to make to the court.—A. May I raise a question? I can secure that information from Columbia International. I was wondering whether you would not consider that the affidavit of Mr. Zeeman was sufficient considering that it is the Treasurer talking in the name of the company.

Q. The Immigration and Nationality Act specifically requires that testimony be taken in a certain form by an officer of this Service from two American citizens. Your case will be sent to New York airmail with a request that those depositions be taken.

53 You are informed that you may have ten days from this date to submit arguments in writing or a brief to accompany this record. Do you desire to submit any brief or argument?—A. No, I have nothing more to add.

The examination is closed, thank you.

I certify that the foregoing, consisting of seven pages, is a full and correct transcript of my shorthand notes at this statement.

(S) Manuela S. de Mendez,
MANUELA S. DE MENDEZ,
*Clerk-Stenographer.*

Attest:

(S) David L. Scoles,
DAVID L. SCOLES,
*Designated Examiner.*

In United States District Court

*Petitioner's Exhibit A*

(Filed Aug. 17, 1953)

No. 586981

UNITED STATES OF AMERICA

DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof)

STATE OF NEW YORK,

*Southern District of New York, ss:*

In the District Court of United States at New York, N. Y.

(1) My full, true, and correct name is Richard Isaac Menasche.

(2) My present place of residence is 769 Seventh Ave., New York, N. Y.

(3) My occupation is supervisor of pictures.

(4) I am 41 years old.

54 (5) I was born on Sept. 19, 1906 in Antwerp, Belgium.

(6) My personal description is as follows: Sex, male; color, white; complexion, fair; color of eyes, dk. brn.; color of hair, black; height, 5 feet 7 inches; weight, 150 pounds; visible distinctive marks, none; race, white; present nationality, France.

(7) I am married; the name of my wife is Frieda; we were married on 9/21/46 at Cairo, Egypt; she was born at Geret, Rumania on Dec. 28, 1915; and entered the United States at: never; and now resides at Belgium.

(8) I have no children.

(9) My last place of foreign residence was Brussels, Belgium.

(10) I emigrated to the United States from London, England.

(11) My lawful entry for permanent residence in the United States was at New York, N. Y. under the name of Richard Isaac Menasche on Mar. 7, 1948; on the Plane NC 90927.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer.

(13) I have not heretofore made declaration of intention.

(14) It is my intention in good faith to become a citizen of the United States and to reside permanently therein.

(15) I will before being admitted to citizenship, renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at the time of admission to citizenship I may be a subject or citizen.

(16) I am not an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage;

55 nor a disbeliever in or opposed to organized government;

nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(17) I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me and was signed by me.

I do swear (affirm) that the statements I have made and the intentions I have expressed in this declaration of intention subscribed by me are true to the best of my knowledge and belief: So help me God.

(S) RICHARD ISAAC MENASCHE.

Subscribed and sworn to (affirmed) before me in the form of oath shown above in the office of the Clerk of said Court, at New York, N. Y. this 16th day of April, anno Domini 1948 I hereby certify that Certification No. 6309 k-105197 from the Commissioner of Immigration and Naturalization, showing the lawful entry for permanent residence of the declarant above named on the date stated in this declaration of intention, has been received by me, and that the photograph affixed to the duplicate and triplicate hereof is a likeness of the declarant.

WILLIAM V. CONNELL,
*Clerk of the U. S. District Court.*

[SEAL] By (S) WILLIAM MATTSON,
*Deputy Clerk.*

(Photograph)

Form N-315

U. S. Department of Justice

Immigration and Naturalization Service

(Edition of 11-1-41)

56 In United States District Court

*Opinion*

(Filed September 24, 1953)

The petition for Naturalization of Richard Isaac Menasche, petitioner herein, came up for final hearing under Sections 336 (a), Chapter 2, Title III of the Nationality Act of 1952 (Title 8 USCA Sec. 1447 (a)), on August 17, 1953 at 9:30 o'clock in the morning. Documentary and oral evidence was adduced at said hearing and the case submitted to the Court on written memoranda filed by the parties, which have been the subject of due consideration by the Court.

The only question at issue is whether petitioner is bound to comply with the physical presence requirement of Section 316 (a) of the Nationality Act of 1952 (Title 8 USCA Sec. 1427 (a)).

The government concedes that if petitioner had filed his petition under the Nationality Act of 1940, he would have met the residence requirement for naturalization contained in Section 307 (a) of said Act (Title 8 USCA Sec. 707 (a)) and that, were it not for the physical presence requirement of Section 316 (a) of the Nationality Act of 1952 (Title 8 USCA Sec. 1427 (a)), he would be eligible to citizenship because of his meeting of all other requirements therefor under both acts.

Petitioner concedes that if he is compelled to meet said physical presence requirement of the Nationality Act of 1952, he would not be yet eligible to citizenship, but claims that such requirement is inapplicable to him because the validity of his Declaration of Intention made on April 16th 1948 under the Nationality Act of 1940 and the proceeding initiated thereby, as well as the status, condition and right in process of acquisition derived therefrom and done or existing at the time the Nationality Act of 1952 took effect,

must be deemed to have continued in full force and unaf-
57 fected by the adoption of the latter act, and that his naturalization must be, therefore, governed by the provisions of the Nationality Act of 1940, which pursuant to the Saving Clause, Section 405 (a) of the 1952 Act (Title 8 USCA Sec. 1101, footnote at p. 204), was in that respect expressly left in full force and effect.

Thus, the problem is reduced to determining whether under the provisions of the aforesaid saving clause petitioner is or is not bound to comply with the physical presence requirement of the Nationality Act of 1952.

The legislative history of the Nationality Act of 1952 sheds no light for the solution of this problem.

The analogy of some judicial precedents invoked by petitioner affords, however, convincing reasons towards a just and equitable solution thereof.

In Petition of Sproule, 19 Fed. Supp. 995, the court characterized "the declaration of intention" as "the first step in the process of naturalization", further stating that the "declarant" thereof "acquires an *inchoate nationality*" even though "he remains an alien until the naturalization is *completed*," and acknowledging that certain *rights* flow from a declaration of intention, subject, however, to a strict construction. [Emphasis supplied.]

See also Terrace v. Thompson, 263 U. S. 197, holding that, for certain purposes, the status of a declarant under a Declaration of Intention is sufficiently different from that of a non-declarant.

Although it is true that a Declaration of Intention is no longer necessary in the process of naturalization under the Nationality Act of 1952, it was, however, the initial step in said process under

the Nationality Act of 1940 which was the only naturalization statute in force when petitioner took his first papers.

The Nationality Act of 1940 contained a saving clause, Section 347 (a), (Title 8 USCA Sec. 747 (a)) which was
58 not as broad as the saving clause contained in the Nationality Act of 1952, Sec. 405 (a), (Title 8 USCA Sec. 1101, footnote at p. 204).

The terms "status," "condition," "right in the process of acquisition," "liability," "obligation," "rights" did not appear in the former, while they were specifically added to the latter.

Construing the saving clause of the Nationality Act of 1940, the Court of Appeals for the Second Circuit held that the provisions thereof did not cover "a mere *condition*, unattended by any affirmative action by the alien or by anyone else." [Emphasis supplied.]

United States ex rel Aberasturi v. Cain, 147 F. 2d 449, 452.

The term "condition" was one of the terms not appearing in the saving clause of the Nationality Act of 1940, there construed, but which was later specifically included in the saving clause of the Nationality Act of 1952.

No doubt Judge Clark's dissenting opinion in the above case had much to do with the inclusion of said term in the latter act to avoid the narrow interpretation given to the saving clause of the former act in the majority opinion in said case.

Four years later, the Court of Appeals for the District of Columbia was called upon to construe the same saving clause of the 1940 Act, and in failing to agree with the holding of the Court of Appeals for the Second Circuit in United States ex rel Aberasturi v. Cain, supra, it held that, although not specifically included in its language, said "saving clause must have referred to *rights in the process of acquisition.*" [Emphasis supplied.]

Bertoldi v. McGrath, 178 F. 2d 977, 979.

It is again significant that the phrase "right in the proc-
59 ess of acquisition" which did not appear in the saving clause of the 1940 act was later specifically included in the saving clause of the 1952 Act.

No doubt Congress, in adding said phrase to the saving clause of the Nationality Act of 1952, gave considerable weight to the above decision, and had this, as well as Judge Clark's dissenting opinion in the United States ex rel Aberasturi v. Cain case, supra, in mind, for including in the language of said clause the other terms to which reference has been made hereinabove and which do not appear in the saving clause of the 1940 Act.

The record in this case shows, and the government does not deny, that the petitioner falls under several of the situations contemplated in the saving clause of the 1952 Act, which, as above stated is much broader than that of the 1940 Act. For instance:

(a) He took out his first papers, i. e., signed and had issued to him his Declaration of Intention on April 16, 1948 and relied and rested on it to comply with the further requirements of the Nationality Act of 1940, then in full force and effect, and which, under the holding of the Court in Petition of Sproule, *supra*, was the first step in the process (proceedings) for naturalization, acquiring thereby an inchoate nationality and certain rights flowing therefrom. It cannot be denied that said Declaration of Intention and the proceeding initiated thereby were valid at the time the Nationality Act of 1952 went into effect and, were it not for the enactment of this Act, would have ripened into naturalization upon petitioner's compliance with all the other requirements of the 1940 Act (which is conceded) and upon his subsequent filing of the petition for naturalization barely four months after the effective date of the 1952 Act.

60 (b) The proceedings for his naturalization had been long initiated and brought when the 1952 Act went into effect.

(c) He enjoyed at the time a status, condition and right in the process of acquisition, the existence of which cannot be denied.

The saving clause of the 1952 Act directs that nothing contained in said Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any such declaration of intention, or proceeding; or to affect any proceedings brought, or any status, condition, right in process of acquisition, act, thing or matter such as those done, existing and enjoyed by petitioner, as heretofore discussed, at the time said act went into effect, and further provides that, as to all such proceedings, statutes (sic), conditions, rights, acts, things or matters, the statutes or parts of statutes repealed by said Act, are, unless otherwise specifically provided therein, thereby continued in force.

As regards the present controversy, the government concedes that there is nothing in said act specifically providing otherwise.

If, as the court said in Bertoldi v. McGrath, supra, the words of the saving clause in the 1940 Act, "were about as broad as language could be" in the matter of protecting the rights of the plaintiff therein, it can certainly be said here, with stronger force, that the same words plus such others as "status," "condition," "right in the process of acquisition" now contained in the saving clause of the 1952 Act, and which did not figure in the saving clause there construed, are actually as broad as language could be in the sense of affording protection to the petitioner herein.

Paraphrasing the opinion in said case, it can be more aptly stated here that said words "evince a clear intent on the part

61 of Congress that the new act should take effect prospectively." I still more strongly think that the 1952 Act means "that rights partly accrued under the old act should not be disturbed by the new one. The opposite view would be, to take an extreme illustration, that if "an alien had lawfully entered this country and had filed his declaration of intention 4 years and 364 days prior to the effective date of the Nationality Act of 1952 and complied prior thereto with all the requirements of the pre-existing act," his slowly ripening citizenship would have been struck down."

I share the opinion "that Congress intended, by the saving clause, to prevent that sort of result."

The ruling in Bertoldi v. McGrath, supra, was subsequently accepted by the government. (Cf Acheson v. Albert, 195 F. 2d 573, 575).

So far said ruling has not been reversed, modified or in any way changed or altered by the Supreme Court.

If the petitioner herein is not entitled to the protection of the saving clause in the 1952 Act in the sense hereinabove discussed, the said saving clause would afford no protection at all to anybody. Obviously, its construction cannot be limited as relating to rights which had been completely acquired at the time the act came into effect, as would be the case of a petition for naturalization meeting all the requirements of the 1940 Act and filed before the 1952 Act became effective, to which the government makes reference in its brief in connection with paragraph (b) of Sec. 405 of the 1952 Act (Title 8 USCA Sec. 1801, footnote at p. 204), since said 1952 Act in no wise purported to destroy retroactively citizenship fully acquired. So it must exclusively be meant to deal with status, conditions, and rights in the process of acquisition such as those enjoyed by petitioner herein.

To hold otherwise would be to attribute to Congress the
62 adoption of a meaningless provision of law, which in this Court's opinion is inconceivable.

The petition must be, therefore, granted and petitioner should be admitted to citizenship.

San Juan, Puerto Rico, September 24, 1953.

(S) CLEMENTE RUIZ NAZARIO,
*United States District Judge*

In United States District Court

*Findings of fact and conclusions of law*

(Filed September 24, 1953)

The petition filed in this case came on for hearing on August 17, 1953, and the Court, having considered the report filed herein on behalf of the Immigration and Naturalization Service of the Department of Justice of the United States by the designated Naturalization Examiner, Mr. David L. Scobie, which contains the "Findings of Fact, Conclusions of Law and Recommendation of the Designated Naturalization Examiner," as well as the evidence adduced at the hearing of the above-mentioned petition, and the whole record thereof and briefs of counsel, being duly advised in the premises and on the basis of the Opinion rendered herein on this date, now makes and adopts the following Findings of Fact and Conclusions of Law:

*Findings of fact*

1. The petitioner was lawfully admitted into the United States for permanent residence on March 7, 1948.

2. Pursuant to law, petitioner signed and filed in his behalf a Declaration of Intention under the Nationality Act of 1940, on April 16, 1948.

3. In reliance upon the law as it then prevailed, petitioner
63 was absent from the United States for more than 6 months but less than one year, from and after the date of his legal entry, as follows:

April 22, 1948 to March 5, 1949
March 27, 1949 to March 7, 1950
March 19, 1950 to March 5, 1951
March 19, 1951 to February 21, 1952

and for less than six months from:

June 17, 1952 to June 21, 1952
January 5, 1953 to January 7, 1953

4. Petitioner, since 1939, has been continuously employed by Columbia Pictures International, an American business corporation, and his absences abroad were occasioned or necessary in connection with his employment by that corporation which was at all times engaged in the promotion of foreign trade and commerce of the United States.

5. Petitioner filed a petition for naturalization on April 24, 1953, at or about and prior to the time of his departure for France.

6. Within the 5 year period immediately preceding the date of the filing of his petition, petitioner was physically present in the

United States for a total of 16 months and absent from the United States under the circumstances hereinabove described, for a total of 44 months.

7. Petitioner did not in fact abandon his residence in the United States during such periods of absence.

8. According to the statement made by the representative of the Immigration and Naturalization Service at the hearing on this petition, and as conceded in the government's brief, petitioner has complied with all other requirements of the Immigration and Nationality Act, except that contained in Section 316 (a) of the 1952 Act (Title 8 USCA Sec. 1427 (a)), which requires that a petitioner for naturalization be physically present within the United States for a period of not less than 2½ years.

64 9. By virtue of the facts hereinabove found, and pursuant to the provisions of the Saving Clause in the Immigration and Nationality Act of 1952, Section 405 (a) of the said Act (8 USCA 1101, 1952 Cumulative Annual Pocket Part, footnote pp. 204–205), and of what Congress must be deemed to have intended thereby, the Court further finds that when the said Act went into effect on December 24, 1952 petitioner was holding a valid Declaration of Intention, was enjoying a status and condition and was in the process of acquiring a right, as such terms are used in the aforesaid Saving Clause.

*Conclusions of Law*

1. Petitioner has met with all other requirements contained in the Immigration and Nationality Act of June 27, 1952 (Title 8 USCA, Chapter 12), except that he has not been physically present within the United States for the 2½ year period required under said Act.

2. Unless the physical presence requirement contained in the above Act is to be applied to the petitioner in this case, petitioner is entitled to become a citizen of the United States under the petition which he has filed herein.

3. By virtue of the facts hereinabove found, and pursuant to the provisions of the Saving Clause in the Immigration and Nationality Act of 1952, Section 405 (a) of the said Act (Title 8 USCA 1101, 1952 Cumulative Annual Pocket Part, footnote pp. 204–205), and of what Congress must be deemed to have intended thereby, the Court concludes that when the said Act went into effect, on December 24, 1952, petitioner was holding a valid Declaration of Intention, had initiated valid proceedings for his naturalization under the Nationality Act of 1940, and was enjoying a

status, condition and right in the process of acquisition,
65 as such terms are used in the Saving Clause hereinabove
referred to, the validity of which were not affected by the enactment of the Nationality Act of 1952, and as to which the provisions of the Nationality Act of 1940 remained in full force and effect, and he does not have to meet the physical presence requirement of Section 316 (a) of the Nationality Act of 1952 (Title 8, USCA Sec. 1427 (a)) to be entitled to become a United States citizen.

4. Petitioner is entitled to be admitted to citizenship under the terms of both the Nationality Act of 1940 in effect up to December 24, 1952 and the Nationality Act of 1952, approved June 27, 1952 in the light of the construction which the Court has given to Section 405 (a) of the latter Act.

5. The petition for naturalization herein filed should be granted. Judgment will be entered accordingly.

San Juan, Puerto Rico, this 24th day of September 1953.

(S) CLEMENTE RUIZ NAZARIO.
*United States District Judge.*

In United States District Court

*Judgment*

(Filed September 24, 1953)

The above entitled petition for naturalization of Richard Isaac Menasche came on for final hearing before the Court on August 17, 1953 at 9:30 o'clock in the morning, the petitioner appearing in person and by his attorney Tomas I. Nido, Esq., of Fiddler, Gonzales & Nido, and the government appearing by attorney Eugene E. Cole, Esq., Chief of the Nationality & Status Section of the Immigration and Naturalization Service of the United States Department of Justice for the Sixth District, and testimony and documentary proof having been offered and briefs filed by
66 both parties, and the Court having filed its Findings of Fact, Conclusions of Law and Order for Judgment, and its Opinion herein, now, pursuant to said order for Judgment, it is hereby

Ordered and adjudged that the petition for naturalization of petitioner Richard Isaac Menasche be, as it is hereby granted.

San Juan, Puerto Rico, this 24th day of September, 1953.

CLEMENTE RUIZ NAZARIO.
*United States District Judge.*

In United States District Court

*Notice of appeal*

(Filed October 30, 1953)

Notice is hereby given that the United States of America, through the Immigration and Naturalization Service of the United States Department of Justice, for the Sixth District, hereby appeals to the Circuit Court of Appeals for the First Circuit from the judgment entered on the 24th day of September, 1953 in the above entitled matter, granting the petition for naturalization of petitioner Richard Isaac Menasche.

San Juan, Puerto Rico, October 30, 1953.

PASCUAL AMADO RIVERA,
*United States Attorney.*

By (S) R. Rodriguez Antongiorgi,
R. RODRIGUEZ ANTONGIORGI,
*Assistant United States Attorney.*

[Clerk's certificate to foregoing transcript omitted in printing.]

PROCEEDINGS IN COURT OF APPEALS

On February 4, 1954, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, Chief Judge, and Honorable Albert B. Maris (by special assignment) and Honorable Peter Woodbury, Circuit Judges, sitting.

Thereafter, to wit, on March 3, 1954, the following opinion of the Court and concurring opinion were filed:

## UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

### No. 4798

UNITED STATES OF AMERICA, APPELLANT

*v.*

RICHARD ISAAC MENASCHE, APPELLEE

Appeal from the United States District Court for the District of Puerto Rico

[115 F. Supp. 434]

Before MAGRUDER, *Chief Judge*, and MARIS and WOODBURY, *Circuit Judges*

Douglas P. Lillis, Acting District Counsel, Miami District, Immigration and Naturalization Service, with whom Ruben Rodriguez Antongiorgi, United States Attorney, District of Puerto Rico, was on brief, for appellant.

Thomas I. Nido, with whom Fiddler, Gonzalez & Nido was on brief, for appellee.

OPINION OF THE COURT—March 3, 1954

WOODBURY, *Circuit Judge*:

The petitioner-appellee, a native of Belgium and citizen of France, lawfully entered the United States for permanent residence on March 7, 1948, and on April 16 of the same year he filed his Declaration of Intention to become a citizen of the United States. His employment in an executive capacity by a wholly owned subsidiary of Columbia Pictures International, an American corporation, necessitated his absence from the United States for periods of more than six months, but never for more than a year at a time, on several occasions during the following five years. On April 24, 1953, he filed his Petition for Naturalization in the court below.

The Naturalization Examiner designated to conduct the petitioner's preliminary examination found, and the United States does not deny, that in spite of the petitioner's absences he did not in fact abandon or otherwise forfeit his "residence" in the United States. On the other hand, the petitioner concedes, as he must, that his absences were of such frequency and duration that he was not physically present in the United States for at least one half of the five-year period immediately preceding the filing of his Petition for Naturalization. This, the Government contends, prevents the petitioner's naturalization under § 316(a)[1] of the Immigration and Nationality Act (66 Stat. 242) which was passed over presidential veto on June 27, 1952, and went into effect 180 days thereafter on December 24th. The petitioner, however, contends (the court below agreed and admitted the petitioner to citizenship) that his lack of physical presence in the United States is of no consequence for the reason that he is entitled to be naturalized under § 307(a)[2] of the Nationality Act of 1940 (54 Stat. 1142) which contains no requirement of physical presence in the United States prior to a petition for naturalization.

---

[1] No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years *and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time*, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. [Italics supplied.]

[2] No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

The answer to these conflicting contentions lies in the meaning of subsections (a) and (b) of § 405 of the Immigration and Nationality Act of June 27, 1952, which in material part read:

> "(a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, [sic (statuses?)] conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.
>
> * * *
>
> "(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed."

Certainly if Menasche could have filed a petition for naturalization prior to the effective date of the 1952 Act he would have been entitled under the specific provisions of subsection (b) above to have had that petition heard and determined in accordance with the Nationality Act of 1940. *United States* v. *Cunha*, decided by this court January 8, 1954. And from the particularity of that provision the converse would seem to follow, that is, that all petitions for naturalization filed after the effective date of the Immigration and Nationality Act should be heard and determined in accordance with the provisions of that Act and not in accordance with the requirements of the statute which preceded it. Subsection (a) of § 405, however, is broad and sweeping in its terms. Indeed it is so comprehensive that subsection (b) seems redundant. See *Shambera* v. *United States*, decided by the Court of Appeals for the Second Circuit January 25, 1954. But however that may be, subsection (a) provides categorically that "Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, . . . or to affect . . . any status, condition, *right in process of acquisition* [italics ours] . . . existing, at the time this Act shall take effect;

but as to all such . . . rights . . . the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect."

We need give no weight to the continuing validity of Menasche's declaration of intention, for in the 1952 Act Congress eliminated the requirement of a declaration of intention as a condition precedent to naturalization. Nor do we pause to inquire whether Menasche acquired a "status" of some kind, or performed or acquired some sort of a "condition," when he filed his declaration of intention in April 1948. The reason for this is that from that time on he was in the process of acquiring a "right" for he was complying with then existing statutory requirements for naturalization, and in *Tutun v. United States*, 270 U.S. 568, 578 (1926) Mr. Justice Brandeis, speaking for a unanimous court, said, citing *United States v. Ginsberg*, 243 U.S. 472, 475 (1917) and *Luria v. United States*, 231 U.S. 9, 22 (1913), that although the opportunity to become a United States citizen by naturalization was not a right but merely a privilege, nevertheless the opportunity for citizenship having been conferred by statute, a right to receive a certificate of naturalization arises once all the statutory requirements have been met and the requisite facts are established. Thus, although Menasche acquired no right to naturalization in 1948 when he filed his declaration of intention, he did then start to comply with the statutory requirements necessary at that time for the acquisition of that "right." Hence we think it clear that he was in the process of acquiring a "right" from April 16, 1948 on through December 24, 1952, when the Immigration and Nationality Act became effective. It follows that his situation falls squarely within the provisions of § 405(a) quoted above.

The Government argues that this construction of the section should be avoided because it would leave the law as to the naturalization of aliens unsettled for many years to come. This may be so, but the argument should be addressed to Congress. The words of the statute lead clearly to the result we have reached.

*The judgment of the District Court admitting the appellee to citizenship is affirmed.*

MAGRUDER, *Chief Judge*, (concurring):

I concur in the opinion of the Court. It is not apparent to me how our interpretation of the statute will result in "unsettling" the law relating to naturalization for many years. The only result will be — and this is quite a different thing — that the provisions of the 1940 Act will continue to govern a greater number of cases than the government would like, and that provisions of the 1952 Act will not be fully applicable for a greater period than the government would like. For all we know, the Congress in so providing may have had in mind the equities of a situation like the present, where, at the

date the 1952 Act went into effect, the petitioner had arrived almost at the threshold of American citizenship, following faithfully the procedures for acquiring a right to naturalization under the 1940 Act. We are naturally loath to accept the government's contention that the Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again.

PROCEEDINGS IN COURT OF APPEALS

On the same day, March 3, 1954, the following judgment was entered:

JUDGMENT—March 3, 1954

This cause came on to be heard on the record on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court admitting the appellee to citizenship is affirmed.

By the Court:
(S.) ROGER A. STINCHFIELD,
Clerk.

Thereafter, to wit, on April 3, 1954, mandate issued to the District Court.

CLERK'S CERTIFICATE

I, Dana H. Gallup, Chief Deputy Clerk of the United States Court of Appeals for the First Circuit, and during the temporary absence of the Clerk, in charge of the affairs of said Clerk's office and custodian of its files and papers, certify that the foregoing pages, numbered 1 to 75 inclusive, contain and are a true copy of the record appendix and proceedings to and including April 22, 1954, in the case in said Court numbered and entitled, No. 4798, United States of America, appellant, versus Richard Isaac Menasche, petitioner, appellee.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Court of Appeals for the First Circuit, at Boston, Massachusetts, in said First Circuit, this twenty-third day of April, A.D. 1954.

[SEAL.]

(S.) DANA H. GALLUP,
*Chief Deputy Clerk.*

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954

73-75 Supreme Court of the United States

No. 104, October Term, 1954

UNITED STATES OF AMERICA, PETITIONER

*vs.*

RICHARD ISAAC MENASCHE

*Order allowing certiorari*

(Filed October 14, 1954)

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED
MAY 28 1954
HAROLD B. WILLEY, Clerk

No. [redacted] 104

# In the Supreme Court of the United States

OCTOBER TERM, 1954

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UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD ISAAC MENASCHE

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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# In the Supreme Court of the United States

OCTOBER TERM, 1953

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No. —

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD ISAAC MENASCHE

---

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

The Solicitor General, on behalf of the United States, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, affirming a judgment admitting respondent to citizenship.

**OPINIONS BELOW**

The opinions of the Court of Appeals (R. 69–73) are reported at 210 F. 2d 809. The opinion of the District Court (R. 56–62) is reported at 115 F. Supp. 434.

**JURISDICTION**

The judgment of the Court of Appeals was entered March 3, 1954 (R. 73). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Section 405 (a) of the Immigration and Nationality Act of 1952 provides that a "right in process of acquisition" on the Act's effective date shall be governed by prior law unless otherwise provided. Section 405 (b) provides that petitions for naturalization filed *before* the effective date of the Act shall be determined in accordance with prior law. The question presented is whether a petition for naturalization, filed *after* the effective date of the Act by one who was not eligible for naturalization when the Act went into effect, may nevertheless be determined under prior law because a declaration of intention had been filed before such effective date.

## STATUTES INVOLVED

Section 405 of the Immigration and Nationality Act of 1952, 66 Stat. 280, provides in pertinent part:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or

proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection.

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Section 316 (a) of the Immigration and Nationality Act of 1952, 66 Stat. 242, provides in pertinent part:

> No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, * * *.

Section 307 of the Nationality Act of 1940, 54 Stat. 1142, 8 U. S. C. (1946 ed.) 707, provided in pertinent part:

> (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years * * *.
>
> (b) Absence from the United States for a continuous period of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the

> period between the date of filing the petition and the date of final hearing, shall be presumed to break the continuity of such residence, but such presumption may be overcome by the presentation of evidence satisfactory to the naturalization court that such individual had a reasonable cause for not sooner returning to the United States. * * *.

**STATEMENT**

Respondent was admitted to the United States for permanent residence on March 7, 1948 (R. 38). On April 16, 1948, he filed a declaration of intention (R. 53–55). His petition for naturalization was filed on April 24, 1953, in the District Court of Puerto Rico (R. 32–41).

During the period between his entry and the filing of the petition for naturalization, respondent, in his capacity as an employee of an American motion picture company, had been absent from the United States during the following periods (R. 39):

> April 22, 1948—March 5, 1949.
> March 27, 1949—March 7, 1950.
> March 19, 1950—March 5, 1951.
> March 19, 1951—February 24, 1952.
> June 17, 1952—June 21, 1952.
> January 5, 1953—January 7, 1953.

Thus, during the five-year period immediately preceding the date of his petition for naturalization, he had been absent from the United States a total of forty-four months and he had been

physically present in the United States a total of sixteen months (R. 47).

The petition for naturalization was opposed on the ground that respondent had failed to meet the requirement of Section 316 (a) of the Immigration and Nationality Act of 1952, *supra*,[1] that he be physically present within the United States for at least one-half of the five-year period preceding the filing of petition (R. 24–31). At the hearing, the Government conceded that, if petitioner's case were governed by Section 307 (a) of the Nationality Act of 1940, *supra*, he would have been eligible for naturalization since he had not abandoned his residence in the United States during the five-year period (R. 15). The District Court granted the petition for naturalization (R. 65), holding that, under the general savings clause of the 1952 Act, Section 405 (a), *supra*, petitioner's application was to be determined under the 1940 Act (R. 56–65). The Court of Appeals affirmed (R. 73). In its opinion, the court recognized that the specific provision in Section 405 (b), *supra*, that petitions for naturalization filed before the effective date of the 1952 Act should be determined in accordance with the law in effect at the time of filing, suggested that all petitions filed after the effective date of the Act

[1] The effective date of the Act was December 24, 1952, before the filing of the petition for naturalization and, in fact, before petitioner had completed the five-year residence period required under both the old and the new Acts.

should be determined under the 1952 Act (R. 71). It nevertheless held that, after the filing of his declaration of intention in 1948, petitioner had a "right in process of acquisition" which was saved by the broad provisions of Section 405 (a) (R. 69–73).

## REASONS FOR GRANTING THE WRIT

In holding that, despite the provisions of Section 405 (b) specifically relating to petitions for naturalization, such petitions filed after the effective date of the 1952 Act may nevertheless be determined under prior law by virtue of the broad language of Section 405 (a), the court below has decided a question of continuing importance in the administration of the naturalization laws in a manner which is basically in conflict with the decision of the Court of Appeals for the Second Circuit in *Shomberg* v. *United States*, 210 F. 2d 82, petition for certiorari pending, No. 717, this Term.

1. Section 405 (a) contains broad language saving, *inter alia*, "any status, condition, right in process of acquisition," at the time the Act became effective, with, however, the qualifying clause "unless otherwise specifically provided therein." Section 405 (b) specifically provides:

> Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect

> shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Even if it be assumed, as the court below held, that petitioner, who had not completed his five-year residence requirement and therefore had no right to file a petition for naturalization when the new Act took effect, was nevertheless possessed of a "right in process of acquisition,"* it is clear that, if Sections 405 (a) and 405 (b) are both to be given effect, Section 405 (b) must be deemed a clause "otherwise specifically provided" in the statute, which takes naturalization proceedings out of the general provisions of Section 405 (a). Its express provision that petitions for naturalization heretofore filed shall be governed by the prior law shows that petitions for naturalization subsequently filed are to be governed by the new Act. This conclusion is supported, not only by the well-established and often reiterated rules of statutory construction that "It is the duty of the court to give effect, if possible,

---

*We believe this assumption is itself wrong. There is no "right" to naturalization until all the requirements fixed by Congress have been met. *Tutun* v. *United States*, 270 U. S. 568, 578. Since petitioner had not met those requirements by the time the new Act went into effect and could not have been naturalized prior to that date, there was no right which could have been in the process of being acquired.

See also *Brown* v. *Duchesne*, 19 How. 183, 194; *McKenna* v. *Scottish Investment Company*, 153 U. S. 318, 323; *Hellmich* v. *Hellman*, 276 U. S. 233, 237; *McDonald* v. *Thompson*, 305 U. S. 263, 266; *Shapiro* v. *United States*, 328 U. S. 38[illegible], 344.

to every clause and word of a statute" (*Montclair* v. *Ramsdell*, 107 U. S. 147, 152),[1] and that the general language of a statute "will not be held to apply to a matter specifically dealt with in another part of the same enactment" (*Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208), but also by the specific language of other sections of the Nationality Act of 1952.

Section 405 (b), dealing with petitions for naturalization, itself contains the qualification "except as otherwise specifically provided in title III," thus showing a Congressional purpose that even petitions for naturalization filed before the effective date of the Act should in some measure be governed by the new statute. When Congress spelled out those specific exceptions in Title III (Sections 311, 313, 315, 318 and 331 (d) of the 1952 Act), it introduced each with the clause "Notwithstanding the provisions of section 405 (b)," or equivalent phraseology. It did not say "notwithstanding the provisions of sections 405 (a) and (b)." Manifestly, when Congress thus rendered some provisions of the old law inapplicable under the specific savings clause of Section 405 (b) even where a petition for naturalization had actually been filed before the effective date

[1] See also *Townsend* v. *Little*, 109 U. S. 504, 512; *Kungys* v. *United States*, 485 U. S. 759, 778; *Missouri* v. *Ross*, 299 U. S. 72, 76; *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 30; *Peckham* v. *United States*, 210 U. S. 103, 107.

of the new law, it could not have intended that the old law would nevertheless remain applicable under the general savings clause of Section 405 (a). This is clear evidence that Section 405 (b) was intended to be the savings clause exclusively applicable in determining whether the old or new law governs.

Section 405 is obviously derived, with modifications, from the savings clause provisions of Section 347 of the Nationality Act of 1940 (8 U. S. C. 747). This prior savings clause section consisted of a general savings clause, Section 347 (a), followed by the following subsection (b):

> Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

The present Section 405 (b) is a substantially identical savings clause without the two-year limitation. The presence of the two-year limitation in the earlier specific savings clause for petitions for naturalization would even more clearly negate the possibility of prior law continuing to apply indefinitely to naturalization matters. Yet it appears that the two-year limitation was omitted in Section 405 (b) of the present Act only because it had resulted in con-

fusion. Compare *Petition of Hirsch*, 50 F. Supp. 638 (E. D. Pa.), with *Petition of La Bella*, 52 F. Supp. 980 (D. Conn.).

Moreover, the phrase "right in process of acquisition" in Section 405 (a), which was relied upon by the court below, seems to have originated in *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C. A. D. C.), interpreting Section 347 of the 1940 Act in a situation not covered by a specific savings clause such as paragraph (b) of that section or Section 405 (b) of the present Act.

2. The Court of Appeals for the Second Circuit in *Shomberg* v. *United States*, *supra*, a case involving the construction of one of the exception clauses in Title III, Section 318, has rejected the rationale of the court below. In that case, it was contended that despite the phrase, "Notwithstanding the provisions of section 405 (b)," which appears in Section 318, that section of the 1952 Act could not be applied to a person whose petition for naturalization was pending when the new Act became effective because he had a "right in process of acquisition" which, under Section 405 (a) must be determined under the prior law. The court rejected that contention, holding that to read Section 405 (a) so broadly would render Section 405 (b) "entirely redundant." That is, in holding that a negating reference to Section 405 (b) subjects even pending petitions to the new Act, it was concluding

that the specific savings clause in that subsection is exclusively applicable to naturalization matters notwithstanding the broad language of Section 405 (a), which it admitted would apply in the absence of subsection (b), 210 F. 2d at 84–85. Thus, the *Slomberg* decision is in its reasoning in clear conflict with the decision below.

3. There was good reason for Congress to take naturalization proceedings out of the possible broad sweep of Section 405 (a) and to provide a savings clause specifically relating to naturalization. Congress must have been aware that there were many outstanding declarations of intention which were valid in the sense that they were less than seven years old (see 8 U. S. C. (1946 ed.) 731). While accurate figures are not available, the Immigration and Naturalization Service estimates that presently there must be on file about 300,000 of such declarations. Since the broad language of Section 405 (a), standing alone, could be subject to the interpretation now given it by the court below to make the old law applicable to any such declarants, it was natural that in a law which, as we show below, made a number of substantial changes in the requirements for naturalization, Congress would wish to prescribe a specific rule for determining whether the new or the old law governed. Congress did this by enacting Section 405 (b), which fixes the date of the filing of the petition as the dividing

line.[5] The decision below is thus clearly contrary to the obvious Congressional intent as reflected in the language and context of the Act.

4. The number of outstanding declarations of intention makes it evident that the question presented by this case is one of general importance. The problem is not even limited by the number of those filing declarations of intention. *In re Jocson*, 117 F. Supp. 528 (D. Hawaii), presently on appeal before the Ninth Circuit, held that an "Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization," filed by an alien serving in our armed forces who was not required to file a declaration of intention, was sufficient to mark the start of "a right in process of acquisition" which was preserved by Section 405 (a) and which thus made the 1940 Act, rather than the 1952 Act, controlling.

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[5] The decision below does not and could not rest on the fact that declarations of intention are mentioned in Section 405 (a) since declarations of intention are not required under Section 334 of the new Act. The legislative history shows that, when the proposal to eliminate the requirement of a declaration of intention was considered, it was pointed out that complete abolition of the declaration would jeopardize the status of a number of aliens under many state statutes and private regulations, such as union rules, which restrict the right to engage in certain types of work to citizens or declarant aliens. E. g. Joint Hearings before the Subcommittees of the Committees on the Judiciary, 82d Cong. on S. 716, H. R. 2379 and H. R. 2816, pp. 79-80, 89. See also, the Immigration and Naturalization Systems of the United States, Sen. Rep. 1515, 81st Cong., 2d Sess., p. 738. Hence, Congress provided in Section 334 for the voluntary filing of a declaration and in Section 405 (a) preserved the validity of existing declarations.

While, of course, not all declarants or applicants will actually seek naturalization and while a number will undoubtedly be eligible under both the old and the new laws so that the question will not be material in such cases, there are a sufficient number of changes in the requirements for naturalization under the Immigration and Nationality Act of 1952 to insure that the question will recur in a substantial number of cases. The physical presence requirement of Section 316 (a) involved in this case is only one of many points of difference between the old and new Act. The *Jocson* case, for example, involved the command of Section 328 that persons seeking naturalization thereunder meet the requirement of Section 318 of admission for permanent residence. *United States* v. *Pringle* (C. A. 4), decided May 3, 1954, involved the residence requirements with respect to an alien spouse of an American citizen, Section 319 of the new act having made uniform provision therefor as against the varying provisions of Sections 310–312 of the 1940 Act, 8 U. S. C. (1946 ed.) 710–712.[8] Section 101 (f) of the 1952

[8] In the *Pringle* case the applicant had completed the requirements for citizenship under the old Act and had filed an "Application to file Petition for Naturalization" (Form N-400) before the new Act went into effect. The District Court in its opinion, on which the Court of Appeals relied, considered the application as "an essential of the naturalization proceeding," "not [a] remote, preparatory gesture toward citizenship." That case presents a somewhat different problem from the instant one for, as noted, respondent here was not even eligible for naturalization when the new Act went into effect.

Act specifies certain types of conduct which are to preclude a finding of good moral character, instead of leaving the matter to the discretion of the courts as under Section 307 of the 1940 Act, 8 U. S. C. (1946 ed.) 707.

Moreover, the *Shomberg* case illustrates that the proper construction of Section 405 will determine not only whether any step toward naturalization short of the filing of a petition will continue the applicability of the prior law, but also whether such provisions of the new Act as Section 318 will apply to cases in which petitions were pending when the new Act became effective.

Revision and codification of the immigration and naturalization laws had claimed the attention of a committee of Congress for approximately five years, during which time extensive public hearings were held throughout the country and the legislation was revised and redrafted.[1] It would be hard, even if a contrary intent had not been clearly indicated, to impute to Congress an intention to postpone the effectiveness of such legislation for as long as seven years as to any one who had previously filed a declaration of intention, and possibly for an even longer period as to those from whom no declaration was required but who had by some other act expressed an intention eventually to seek citizenship. In the face of the clear Congressional intent ex-

[1] See summary of legislative history set forth in the new edition of 8 U. S. C. A. pp. 1–93.

pressed in Section 405 (b) and the provisions enumerated above rendering even that savings provision inapplicable as to certain requirements of the new Act, the construction of Section 405 (a) by the court below frustrates a clear Congressional mandate.

## CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
*Solicitor General.*

MAY 1954.

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No. 104

# In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD ISAAC MENASCHE

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

## BRIEF FOR THE UNITED STATES

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# In the Supreme Court of the United States

OCTOBER TERM, 1954

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No. 104

UNITED STATES OF AMERICA, PETITIONER

*v.*

RICHARD ISAAC MENASCHE

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

---

## BRIEF FOR THE UNITED STATES

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### OPINIONS BELOW

The opinions of the Court of Appeals (R. 47–51) are reported at 210 F. 2d 809. The opinion of the District Court (R. 38–42) is reported at 115 F. Supp. 434.

### JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1954 (R. 51). The petition for a writ of certiorari was filed on May 28, 1954, and was granted on October 14, 1954 (R. 53). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Section 405 (a) of the Immigration and Nationality Act of 1952 provides that a "right in process of acquisition" on the Act's effective date (December 24, 1952) shall be governed by prior law unless otherwise provided. Section 405 (b) provides that petitions for naturalization filed *before* the effective date of the Act shall be determined in accordance with prior law.

The question presented is whether a petition for naturalization, filed *after* the effective date of the Act by one who would not be eligible for naturalization after the Act went into effect, may, nevertheless, be determined under prior law because a declaration of intention to become a citizen had been filed before such effective date.

## STATUTES INVOLVED

The savings clauses of the Immigration and Nationality Act of 1952, Section 405, 66 Stat. 280, 8 U. S. C. 1101, note, in pertinent part, provide:

> SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, * * * or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect * * * any status, condition, right in process of acquisition, act, thing, * * * or matter, * * * done or existing, at the time this Act shall take effect; but

> as to all such * * * statutes [sic][1], conditions, rights, acts, things, * * * or matters the statute or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *
>
> (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

The full text of Sections 405 (a) and 405 (b) of the 1952 Act and of the savings clauses of the Nationality Act of 1940, Sections 347 (a) and 347 (b), 54 Stat. 1168, 8 U. S. C. (1946 ed.) 747, are set forth in Appendix A, *infra*, pp. 37–38, in parallel columns so as to facilitate comparison.

Other pertinent provisions of the Immigration and Nationality Act of 1952, 66 Stat. 163, are set forth in Appendix B, *infra*, pp. 39–45, as follows: Sections 311, 313 (a), 315 (a), 316 (a), 318, 331 (d), and 334 (f). Other pertinent provisions of the Nationality Act of 1940, 54 Stat. 1137, as amended, 61 Stat. 121, are set forth in Appendix C, *infra*, p. 46, as follows: Section 307 (a) and 331.

---

[1] Presumably the word "statuses" was intended.

## STATEMENT

On April 24, 1953, respondent filed a petition for naturalization in the United States District Court for the District of Puerto Rico (R. 1–5). On September 24, 1953, the trial court granted this petition (R. 45) and the Court of Appeals for the First Circuit affirmed (R. 51). The pertinent facts are undisputed and may be summarized as follows:

Respondent, a French citizen by naturalization, was lawfully admitted to the United States for permanent residence on March 7, 1948 (R. 2, 43). On April 16, 1948, he filed a declaration of intention to become a United States citizen (R. 37–38). During the period between his entry and the filing of his petition for naturalization, respondent, in his capacity as an employee of an American motion picture company, had been absent from the United States during the following periods (R. 2, 17, 23–24):

April 22, 1948–March 5, 1949.
March 27, 1949–March 7, 1950.
March 19, 1950–March 5, 1951.
March 19, 1951–February 24, 1952.
June 17, 1952–June 21, 1952.
January 5, 1953–January 7, 1953.

Thus, on April 24, 1953, the date when he filed his petition for naturalization, respondent had been absent from the United States a total of forty-four months and had been physically

present in this country a total of but sixteen months.

On June 27, 1952, approximately eight months before respondent would have become eligible to be naturalized under the law then in effect, the Immigration and Nationality Act of 1952 was enacted, to become effective December 24, 1952. Section 316 (a) of this Act added to the former requirement of five years of residence immediately preceding the filing of the naturalization petition an additional requirement of actual physical presence in this country for at least one-half of this five-year period.

At the District Court hearing on respondent's petition for naturalization, the Government opposed the petition on the ground that respondent had failed to meet the thirty-month actual physical presence requirement of the 1952 Act. Concededly, respondent had complied with all legal requirements of the 1940 Act and would have been eligible for naturalization if his case were to be governed by the prior law, since he had never totally abandoned his United States residence during the preceding five years, in spite of his forty-four months abroad (R. 10).

The District Court in granting respondent's petition for naturalization (R. 45), and the Court of Appeals in affirming (R. 51), both recognized that the petition did not fall within the terms of Section 405 (b) of the 1952 Act, which specifically

excluded from the operation of that Act certain naturalization petitions pending on December 24, 1952, when the Act went into effect. Nevertheless, both courts concluded that respondent's 1948 declaration of intention gave him a "right in process of acquisition" within the meaning of the general savings provisions of Section 405 (a). It was thus held that respondent's naturalization petition, even though filed after the 1952 Act's effective date, was exempted from having to meet any of the new requirements of that Act (R. 40–42, 44–45, 49–50).[2]

## SUMMARY OF ARGUMENT

Respondent's petition for naturalization was filed in April, 1953, after the effective date of the Immigration and Nationality Act of 1952. Whether respondent is entitled to be naturalized depends upon whether the savings provisions of that Act permit such a subsequently filed petition to be heard and determined under prior law. If the requirements of the 1952 Act govern, as contended by the Government, respondent concededly has no right to be naturalized and his naturalization petition was erroneously granted.

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[2] The District Court further concluded that respondent, by filing his declaration of intention, had also acquired a "condition" and a "status" within the meaning of Section 405 (a) (R. 40–42, 44–45).

A AND B

Sections 405 (a) and 405 (b) of the 1952 Act (*supra*, pp. 2–3) were derived from similar savings provisions included in Sections 347 (a) and 347 (b) of the Nationality Act of 1940. Both Acts in subsection (a) of these savings clauses include in similar broad language a provision of general applicability. Both Acts in subsection (b) of these clauses single out for specific individual consideration the hearing and determination of naturalization petitions. Thus subsection (b) of the 1952 Act provides:

> SEC. 405. * * * (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

This subsection clearly manifests, as did the similar subsection in the 1940 Act, a strong and definite policy to exempt from having to meet the requirements of new law only certain petitions already pending on the effective date of the 1952 Act. While it is phrased, as was the earlier provision, in terms of prior law controlling the determination of certain pending naturalization petitions, this phrasing necessarily implies that all other naturalization petitions, whether pending or subsequently filed, are to be heard and

determined in accordance with the requirements of the new law.

The exceptions contained in title III do not in any way broaden the scope of this savings provision so as to bring within its operation any naturalization petition filed after the effective date of the 1952 Act. Instead, each such specific exception serves to narrow the scope of the clause, so as to make the new Act apply under certain circumstances even to pending petitions. The greater particularity of Section 405 (b) in expressly excluding five types of already pending petitions from being determined by prior law, which had not been so excluded in the 1940 Act, shows an even more obvious intent than was shown in 1940, that the provisions of the new law should govern the determination of all naturalization petitions not expressly saved by this clause.

C

Section 405 (a), the general savings clause of the 1952 Act, does not limit or qualify Section 405 (b) and is not applicable to the hearing and determination of naturalization petitions. This becomes clear from an analysis of Section 405 (a) and from the specific language of other sections of the 1952 Act.

1. Section 405 (a) is a residual savings provision in which Congress has sought to protect, "unless otherwise specifically provided", both Govern-

ment and public from a possible summary divestment of rights or interests either already acquired or in process of acquisition. However, this concern for maintaining orderly administration and preserving existing rights should not be used as an instrument for totally emasculating a companion section. Sections 405 (a) and 405 (b) should each be permitted to function consistently within the area of their applicability as intended by Congress. There is no inherent conflict between the two sections which would prevent their being applied with consistency.

2. The general terms "status", "condition", and "right in process of acquisition", used in Section 405 (a), do not apply to naturalization petitions or to any of the steps preliminary to their filing. To hold otherwise would overlook the reason for the inclusion of these particular terms in Section 405 (a), would result in nullifying Section 405 (b) and in materially weakening the intended effect of certain other provisions of the Act, and would create many serious inconsistencies and inequities which were clearly never intended, as is shown in detail pp. 24–26, 29–34, *infra*.

Furthermore, such a holding would also give a wholly unintended legal effect to the declaration of intention, which, under prior law was but a condition precedent having no independent legal effect as regards naturalization, unless and until followed, after two years, by the filing of a petition for

naturalization. Even this limited effect has been abolished and destroyed by the 1952 Act, under which the declaration of intention has been rendered wholly meaningless in so far as naturalization is concerned. Such declarations remain on a voluntary basis under the 1952 Act, only in order to preserve certain state or other local privileges which depend wholly upon being a declarant alien.

Even assuming *arguendo* that respondent could, for some purposes, have possessed a "right in process of acquisition" by his filing of a declaration of intention, no such right could have arisen for purposes of naturalization. Thus, even if Section 405 (b) had not been included in the 1952 Act, respondent would not have had a "status, condition, [or] right in process of acquisition" within the meaning of Section 405 (a).

D

The opinion of the lower court, in holding for respondent, reflects an undertone of reluctance to find that Congress had intended what the plain meaning of its 1952 enactment indicates, so as to make it unnecessary for respondent to incur further inconvenience and expense by maintaining an additional year of United States residence combined with actual physical presence. However, the wisdom or harshness of Section 405 (b) as applied to particular applicants for citizenship is not a matter for the courts' concern. Since Congress has

made known its will in clear and definite terms, its mandate must be respected. The failure of both lower courts to enforce the statute as written calls for reversal of the judgment below.

## ARGUMENT

### RESPONDENT'S PETITION FOR NATURALIZATION WAS IMPROPERLY GRANTED, SINCE IT WAS FILED AFTER THE EFFECTIVE DATE OF THE IMMIGRATION AND NATIONALITY ACT OF 1952, UNDER WHICH RESPONDENT WAS NOT ELIGIBLE FOR NATURALIZATION

The decision below from the First Circuit and that in No. 48, *Shomberg* v. *United States,* from the Second Circuit, now pending on certiorari before this Court, are in basic conflict as to the proper interpretation of the savings clauses contained in Sections 405 (a) and 405 (b) of the Immigration and Nationality Act of 1952 (*supra,* pp. 2–3). Each case involves a petition for naturalization filed by an alien who is not entitled to have his petition granted under the requirements of the 1952 Act, but who would be entitled to naturalization if prior law were applicable. In neither case is any claim made that the naturalization petition has been exempted from the requirements of the 1952 Act by the provisions of Section 405 (b), the only savings clause which is specifically applicable to the hearing and determination of such petitions. The common legal question is whether the general language of Sec-

tion 405 (a), as contended by each alien, should also be deemed applicable to the hearing and determination of naturalization petitions, in spite of the inconsistencies, anomalies, and apparent frustration of a clear Congressional mandate which would result from such an interpretation.

Obviously, the problem before this Court, in cases of this type, is to construe the statute so as to effectuate the manifested intent of Congress, as reflected in the language and context of the Act. What must have been intended is shown beyond any real doubt when Sections 405 (a) and 405 (b) are read together, along with the Act as a whole, in conformity with time-honored precept. When the statute is thus analyzed, as in Judge Clark's careful opinion for the Second Circuit in *Shomberg*, 210 F. 2d 82, it becomes compellingly clear that Congress never intended Section 405 (a) to qualify or limit the unambiguous provisions of Section 405 (b), or to apply to the hearing and determination of naturalization petitions.

A. SECTION 405 (B), THE ONLY SAVINGS CLAUSE IN THE 1952 ACT APPLICABLE TO THE DETERMINATION OF NATURALIZATION PETITIONS, WAS DERIVED FROM A SIMILAR PROVISION IN THE NATIONALITY ACT OF 1940, WHICH MANIFESTED A DEFINITE POLICY NOT TO EXEMPT FROM THE REQUIREMENTS OF THAT ACT ANY NATURALIZATION PETITION FILED AFTER THE EFFECTIVE DATE OF THE ACT

Section 405 of the Immigration and Nationality Act of 1952 is obviously derived, with modifica-

tions, from the savings clause provisions of Section 347 of the Nationality Act of 1940.[3]

Section 347 (a) of the 1940 Act and Section 405 (a) of the 1952 Act both contain broad language, saving, *inter alia*, the "validity" of already valid documents and proceedings, including declarations of intention and petitions for naturalization, and any act, thing, or matter existing when the respective Acts took effect, with, however, the qualifying clause "unless otherwise" provided. In addition, the 1952 Act added to this section the terms "condition," "status" and "right in process of acquisition," which had been used by the courts of appeals in *United States ex rel. Aberasturi* v. *Cain,* 147 F. 2d 449 (C. A. 2), and *Bertoldi* v. *McGrath,* 178 F. 2d 977 (C. A. D. C.), two conflicting cases involving the interpretation of Section 347 (a) and its application to certain matters *not related to petitions for naturalization.*

In addition to these general savings provisions, both Acts likewise include similar express savings provisions applicable solely and specifically to the hearing and determination of naturalization petitions. These are Section 347 (b) of

[3] The full text of all related savings clauses of both Acts is set forth in Appendix A, *infra*, pp. 37–38.

the 1940 Act and Section 405 (b) of the 1952 Act, which provide:

| 1940 Act—Section 347 (b) | 1952 Act—Section 405 (b) |
| --- | --- |
| (b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed. | (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed. |

Section 405 (b) is, thus, substantially identical with the earlier provision, except for the omission of the two-year limitation. The presence of the two-year limitation in the 1940 savings clause clearly negates the possibility of prior law having been intended to apply indefinitely to naturalization matters involving subsequently filed petitions. Yet it appears that the two-year limitation was omitted in Section 405 (b) of the present Act primarily because it had resulted in needless confusion. Compare *In re Shaver*, 140 F. 2d 180 (C. A. 7) and *Petition of Hirsch*, 50 F. Supp. 638 (E. D. Pa.) with *In re McInnis*, 50 F. Supp. 303 (D. Mass.) and *Petition of La Bella*, 52 F. Supp. 980 (D. Conn.).[4] A similar intent to ex-

[4] In all four of these cases it was recognized, either expressly or implicitly, that Section 347 (b) of the 1940 Act operated so that petitions pending on the effective date of that Act and not finally heard within two years thereafter were to be heard and determined in accordance with the new law, as, of course, were all subsequently filed petitions. The con-

clude all subsequently filed naturalization petitions was obviously in the minds of the draftsmen who included in the 1952 Act the same type of savings clause solely applicable to the hearing and determination of such petitions.

In enacting both the Nationality Act of 1940 and the Immigration and Nationality Act of 1952, Congress thus singled out for similar specific individual treatment the exact circumstances under which the hearing and determination of petitions for naturalization should be saved from the application of any new requirements. Each statute selects for such treatment only certain pending petitions and specifies exactly when these are to be governed by prior law. That Congress did not refer in Sections 347 (b) of the 1940 Act and 405 (b) of the 1952 Act either to declarations of intention or to any other steps preliminary to the filing of naturalization petitions is *per se* highly compelling evidence, under the familiar doctrine of *expressio unius*, that prior law was not intended to govern where only some such preliminary step had been completed. While

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flict and confusion arose on whether the two-year clause was also intended to destroy the "validity" of such prior petitions which had not been heard within the two-year period as to those who were in fact entitled to naturalization under the new law. There seem to be no reported decisions under the 1940 Act in which it was even contended, as here, that a subsequently filed naturalization petition should be determined under the former law, because of the prior filing of a declaration of intention.

both sections are phrased in terms of prior law controlling the determination of certain pending naturalization petitions, they necessarily imply that all other petitions of this kind, whether pending or subsequently filed, are to be heard and determined in accordance with the requirements of the new law.

Even if we were to assume *arguendo* that the broad language of Sections 347 (a) and 405 (a) might properly have controlled were there no subsection (b), the inclusion of the latter in each Act automatically deprives subsection (a) of any applicability to the hearing and determination of petitions for naturalization.

B. SECTION 405 (B) IS WHOLLY UNAMBIGUOUS AND CLEARLY MANIFESTS A SIMILAR DEFINITE POLICY NOT TO EXEMPT FROM THE REQUIREMENTS OF THE 1952 ACT ANY NATURALIZATION PETITION FILED AFTER THE EFFECTIVE DATE OF THAT ACT

The mandate of Section 405 (b) is clear and wholly unambiguous. Giving these words their normal and customary meaning, Congress has fixed a simple and understandable policy, for the courts to follow, after the 1952 Act became effective, in determining the eligibility of aliens for naturalization. Petitions which had been filed before December 24, 1952, the date on which the Act took effect, and which were still pending on that date, should, with certain express exceptions, prescribed in title III of the Act, be heard and determined under the law in existence when

the petitions were filed.[5] Title III provides five categories of exceptions in Sections 311, 313 (a), 315 (a), 318 and 331 (d), the pertinent text of which is set forth in Appendix B, *infra*, pp. 39–45. None of these specific exceptions in any way broadens the scope of Section 405 (b), so as to bring within its operation any naturalization petition filed after that date. Instead, each of the five serves to narrow the scope of the clause, so as to make the 1952 Act apply even to some previously filed and still pending petitions. By necessary implication, all other naturalization petitions not specifically saved from the new law by this section, are to be determined in accordance with the requirements of the 1952 Act.

The greater particularity of Section 405 (b), in expressly excluding five types of already pending naturalization petitions from being governed by prior law, shows an even more obvious intent, than was shown by Section 347 (b) of the 1940 Act, that the provisions of the new Act should govern both the specifically excluded pending petitions as well as all naturalization petitions subsequently filed.

> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often

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[5] Section 405 (a) is found in title IV of the Act and thus is not one of the sections which is excepted from Section 405 (b).

> these words are sufficient in and of themselves to determine the purpose of the legislation. [*United States* v. *American Trucking Associations,* 310 U. S. 534, 543.]

That is the case here. Congress must be presumed to have used the words of Section 405 (b) in their usual and well-settled sense, and since those words are plain even to the legally uninitiated, there is little room for elaborate construction. See *United States* v. *Stewart,* 311 U. S. 60, 63; *Osaka Shoshen Line* v. *United States,* 300 U. S. 98, 101. It was not within the province of the court below to supplement, as it did, the terms of Section 405 (b), but only to ascertain their purpose,—"neither to add nor to subtract, neither to delete nor to distort." *62 Cases of Jam* v. *United States,* 340 U. S. 593, 596. In *United States* v. *Hood,* 343 U. S. 148, 151, this Court condemned the failure of lower courts to give effect to the "obvious, ordinary reading" of even criminal statutes, stating: "We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in."

It is undisputed that on December 24, 1952, when the Immigration and Nationality Act of 1952 went into effect, respondent alien was not eligible for naturalization under prior law, as he had not completed the requisite five years of United States residence. He was thus unable to

take advantage of the special exemption from the requirements of the 1952 Act afforded by Section 405 (b) to certain aliens whose naturalization petitions were pending on the Act's effective date. On April 24, 1953, when respondent filed his naturalization petition, he was still not eligible to become a citizen, since he had not complied with the new actual physical presence requirement of the 1952 Act. In granting respondent's petition, the courts below have failed to give the language of Section 405 (b) its plain meaning and have thus defeated a strongly expressed Congressional intent that all naturalization petitions filed after the effective date of the 1952 Act should be heard and determined in accordance with the requirements of that Act.

C. SECTION 405 (A), THE GENERAL SAVINGS CLAUSE OF THE 1952 ACT, IS NOT APPLICABLE TO THE HEARING AND DETERMINATION OF NATURALIZATION PETITIONS

The conclusion that Congress intended to make no exceptions in the case of subsequently filed naturalization petitions is supported, not only by the plain meaning of Section 405 (b), but also by other applicable well-established rules of statutory construction and by the specific language of other sections of the Immigration and Nationality Act of 1952.

In spite of the seemingly clear statement of policy contained in Section 405 (b), the courts below, in granting respondent's petition, relied

upon the undefined term "right in process of acquisition" which appears in the general savings provisions of Section 405 (a).[6] In concluding that this term was intended to apply to subsequently filed naturalization petitions wherever some preliminary step to their filing has been taken, the obvious reason for the inclusion of this term in the statute has been ignored, as has the qualifying phrase "unless otherwise specifically provided." Section 405 (b) has thus been rendered wholly redundant and unnecessary. Furthermore, serious anomalies and inconsistencies have been created, which clearly were never intended.

*1. Sections 405 (a) and 405 (b) should be read together, and effect given to each*

This Court's comments in *Montclair* v. *Ramsdell*, 107 U. S. 147, 152, are peculiarly appropriate to this case:

> It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.

The proposed revision and codification of the immigration and naturalization laws which culminated in passage of the Immigration and Na-

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[6] The District Court also considered the similarly undefined terms "status" and "condition" here applicable (R. 44-45).

tionality Act on June 27, 1952, claimed the attention of Congress for more than three years, during which time country-wide hearings were held, existing statutes were examined, and judicial decisions were analyzed and compared.[7] The 1952 Act was no hastily contrived piece of legislation which might reasonably be accorded any margin for error. Unless the contrary conclusively appears, every provision of the 1952 Act must be presumed to have been inserted for a definite purpose. *McBroom* v. *Scottish Investment Company*, 153 U. S. 318, 323; *Market Company* v. *Hoffman*, 101 U. S. 112, 115–116. Therefore, except where no alternative exists, no provision should be read out of the statute, which "as a matter of ordinary English speech" has been included. *United States* v. *Hood*, 343 U. S. 148, 151; *Postmaster General* v. *Early*, 12 Wheat. 136, 147.

The court below was not at liberty, in the absence of compelling evidence to the contrary, to find that Congress wrote into Section 405 (a) a wholly meaningless and futile provision by including subsection (b), or to assume that Congress was unaware that it had also enacted the "broad and sweeping" provisions of subsection (a). The court's duty was to ascertain the will

[7] See "Commentary on the Immigration and Nationality Act," 8 U. S. C. A., 1st Vol., pp. 1–91.

of Congress from *all* of the language employed, harmonizing possibly inconsistent expressions and resolving conflict, if such appeared, so as not to defeat or destroy any part of the statute. *Carlson* v. *Landon*, 342 U. S. 524, 542; *Iglehart* v. *Iglehart*, 204 U. S. 478, 485; *Bernier* v. *Bernier*, 147 U. S. 242, 246. That court would have accomplished this result had it followed the familiar rule reaffirmed by this Court in *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107.

> However inclusive may be the general language of a statute, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208.

Section 405 (a) is in the nature of a residual savings provision in which Congress, exercising wide latitude, has sought to protect, "unless otherwise specifically provided" both Government and public from possible summary divestment of rights or interests, acquired or in process of acquisition. It is, as the lower court said, "broad and sweeping in its terms," and so indeed Congress intended it should be. However, this laudable concern on the part of Congress for maintaining orderly administration of the laws and preserving existing and inchoate rights should not be used as an instrument for totally emascu-

lating a companion section. As this Court said in *National Labor Relations Board* v. *Jones and Laughlin*, 301 U. S. 1, 30:

> [Court] are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. *The cardinal principle of statutory construction is to save and not to destroy.* [Emphasis added.]

Sections 405 (a) and 405 (b) should, therefore, be considered together so that each may remain intact and function consistently within the area of its applicability as intended by Congress when it wrote the words in question. *Helvering* v. *Credit Alliance Co.*, 316 U. S. 107, 112; *United States* v. *Landram*, 118 U. S. 81, 85.

That there is no inherent conflict between the two sections which would prevent their being applied with consistency is readily apparent from the opening language of each. Section 405 (a) begins: "Nothing contained in this Act, *unless otherwise specifically provided therein* . . ."; and Section 405 (b) begins: "Except as otherwise *specifically provided in title III* . . ." [Emphasis added]. Thus, Section 405 (a) applies unless exception be found elsewhere in the *entire Act*. Such an exception is found in Section 405 (b). Section 405 (b) applies unless exception is

found in *title III*. Section 405 (a) is not a part of title III, and hence it cannot constitute an exception to Section 405 (b).

*2. The terms "status", "condition" and "right in process of acquisition", used in Section 405 (a), do not apply to naturalization petitions or to any of the steps preliminary to their filing.*

(a) The negative which the court below purported to find resulted solely from its removal from context of the phrase "right in process of acquisition".

> To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute . . . [*United States v. American Trucking Ass'ns*, 310 U. S. 534, 542.]

When such a practice results in materially weakening or nullifying another statute or a separate provision of the same statute, it is particularly inappropriate.

While the published committee reports and Congressional debates do not shed any particular light on why the new phrases "condition", "status", and "right in process of acquisition" were added to Section 405 (a) of the 1952 Act, the reason for their inclusion becomes perfectly clear by a reading of the conflicting opinions in *United States ex rel. Abarasturi v. Cain*, 147 F.

2d 449 (C. A. 2) and *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C. A. D. C.). These two cases involved the interpretation of the parent general savings clause of the 1940 Act, Section 347 (a), as to whether the words "any act, thing, or matter", used in that section, were intended to include a "condition", "status" or "right in process of acquisition", which, under prior law, would have ripened into citizenship by the mere passage of time and without any affirmative act on the part of the prospective citizen.[*] Obviously, these words were included in the general savings provision of the 1952 Act in order to resolve this unresolved conflict in the interpretation of the earlier law, by permitting a period of time commenced before the new Act became effective, where no further affirmative action was required, to continue to run and to ripen into a right *unless the new Act provides otherwise*. It is thus clear that the added words were never intended to

[*] These two cases dealt with the question of whether old or new law controlled the derivation of citizenship by a minor, without court decree, through his parent's naturalization. Under the law in effect immediately prior to the Nationality Act of 1940, the child derived citizenship, provided, among other things, he resided permanently in the United States for five years prior to his twenty first birthday. Act of May 24, 1934, 48 Stat. 797, 8 U. S. C. (1. 34 ed.) 8. Under Section 314 of the 1940 Act, 54 Stat. 1145, 8 U. S. C. (1946 ed.) 714, the residence period had to be completed before the child became eighteen. In both cases the minor would have automatically qualified for citizenship under the old law, but would not have been so entitled if the new law applied.

qualify or limit the explicit provisions and policy set forth in Section 405 (b) regarding the hearing and determination of naturalization petitions. Cf. *In re Katsumi Yoshida*, 113 F. Supp. 631 (D. Haw.).

(2). Just as the mere filing of a naturalization petition does not create a "status, condition [or] right in process of acquisition" within the meaning of Section 405 (a)—if Section 405 (b) is to have any function—neither does the taking of any step preliminary to the filing of such a petition. This is particularly true where the action is that of filing a declaration of intention to become a citizen, a step which has been rendered wholly meaningless, in so far as naturalization is concerned, by the enactment of the 1952 Act.

In its three-year consideration of the revision and codification of the immigration and nationality laws which resulted in passage of the Immigration and Nationality Act on June 27, 1952,[9] Congress gave extensive study to the value of the declaration of intention in the naturalization process and concluded that it no longer served a sufficiently useful purpose to warrant its retention. The declaration of intention procedure was not, therefore, reenacted in the new law. The reasons which led to this decision were substantial and are discussed at length in the legislative his-

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[9] See "Commentary on the Immigration and Nationality Act," 8 U. S. C. A., 1st Vol., pp. 1-91.

tory of the Act.[10] It was recognized, however, that the summary discontinuance of the declaration of intention requirement and the invalidation of declarations then pending would cause severe personal hardship to many aliens whose enjoyment of certain state-, municipally- or privately-controlled privileges, and indeed whose very livelihood in many cases, depended upon their being declarant aliens. Additionally, Congress envisioned resulting administrative confusion on an official level pending amendment of state and local statutes and ordinances containing provisions based on the declaration of intention provision of the Federal statutes.[11]

With this in mind, Congress incorporated in the new law, in Section 334 (f), p. 45, *infra,* a permissive provision for the making of a declaration by any alien of statutory age, but with the express proviso that the declaration was not required as a condition to filing a petition for naturalization. This action, considered in the light of its legislative history, is compelling evidence that Congress intended the declaration of

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[10] See "Revision of Immigration, Naturalization, and Nationality Laws", Joint Hearings before the Subcommittees of the Committees on the Judiciary, Eighty-second Congress, First Session, on S. 716, H. R. 2379, and H. R. 2816, pp. 723–725. See also Senate Report 1515, 81st Cong., 2d Sess., pp. 734, 738, and 744; and House Report No. 1365, 82d Cong., 2d Sess., p. 82.

[11] "Revision of Immigration, Naturalization, and Nationality Laws," *ibid.*, pp. 79–80.

intention to have no legal effect whatever, from and after the effective date of the 1952 Act, as regards naturalization. It also explains the reasons why Congress continued to include "declarations of intention" in the savings provisions of Section 405 (a) of the 1952 Act.

(3). Even if the explicit provisions of Section 405 (b) be disregarded, respondent would not be protected by Section 405 (a). In basing its decision on the premise that respondent had a "right in process of acquisition" which was saved to him by Section 405 (a) of the 1952 Act, the court below stated that it gave no weight to the continuing validity of the respondent's declaration of intention for other purposes, in view of the elimination of the declaration as a condition precedent to naturalization (R. 50). However, if respondent had ever a "right in process of acquisition", within the meaning of the statute, such right could have originated only through the filing of his declaration of intention which was, prior to the 1952 Act, but a statutorily prescribed first step in the naturalization process, 8 U. S. C. (1946 ed., Supp. V) 731. No qualifications, except age and lawful admission for permanent residence, were required and the declaration contained no prayer that the declarant be granted citizenship. Its filing began no action or proceeding. It was only a condition precedent to the subsequent commencement of naturalization pro-

ceedings. The declaration of intention, being solely an instrument of statute, could possess only such limited legal significance as Congress saw fit to give it, and it was subject to elimination at the will of Congress without depriving a declarant of any right, vested or inchoate.

No alien has a "right" to naturalization, certainly not until all statutory requirements have been met. See *Tutun* v. *United States*, 270 U. S. 568, 578. Even assuming *arguendo* that the respondent *could*, for some purposes, have possessed a "right in process of acquisition", as the court held (R. 50), such an inchoate "right" could not have arisen for purposes of naturalization through the filing of his declaration of intention but only through the filing of a petition for naturalization, for only then would his qualifications for citizenship have been placed in issue. The respondent not only did not file but could not have filed a petition for naturalization before the effective date of the 1952 Act because he was not then qualified under the 1940 Act to do so, being some months short of the prescribed five-year residence requirement. Under these circumstances, the respondent could not have had a "right in process of acquisition" within the meaning of Section 405 (a), even if Section 405 (b) had not been included in the savings provisions of the Act.

(4). As already indicated, *supra*, pp. 11–12, the Court of Appeals for the Second Circuit, when faced in *Shomberg* v. *United States*, 210 F. 2d

82, with substantially the same question as confronted the court below, took a diametrically opposite view. That court, striving for a "harmonious interrelation" of the 1952 Act's provisions, followed "the time-honored precept of reading a statute as a whole" and found that, although "[t]he phrase 'right in process of acquisition' appears in a context which if taken alone is obviously broad and quite embracing * * * its general terms must be read with the specific provisions of section 405 (b)" (210 F. 2d at 85). The court in *Shomberg* was concerned with one of the specific exceptions or "priority provisions" to Section 405 (b)—that contained in Section 318—and noted that the latter, as do all similar exceptions, clearly states that it shall apply "[n]otwithstanding the provisions of section 405 (b)". This language would be rendered meaningless, as Judge Clark noted, 210 F. 2d at 84, if subsection (b) were held to be redundant.[12]

The court in *Shomberg* was concerned with Section 405 (b) from a somewhat different angle than was the court below. However, the problem remains fundamentally the same in both cases, viz., whether Section 405 (b) is decisive in determining whether the 1940 Act or the 1952 Act shall control the hearing and determination of petitions after December 24, 1952.

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[12] The court below cited the *Shomberg* case, following a statement that "subsection (b) seems redundant" (R. 49), but did not discuss that decision's analysis.

In enacting the 1952 Act, Congress was apparently so satisfied that Section 405 (b) would be construed in its ordinary sense that when it sought to insure that certain sections of the 1952 Act, if applicable, would govern *all* naturalizations heard and determined after December 24, 1952, irrespective of the date the petitions were filed, and wrote into those sections express provisions designed to achieve that end, such language as "notwithstanding the provisions of section 405 (b)" was invariably used. In no such case was any reference made to Section 405 (a). It was one of those sections—Section 318—which is involved in *Shomberg*. These excepting provisions, to be found in various sections of the 1952 Act, will be virtually nullified under the lower court's ruling. If subsection (a) and not subsection (b) is to determine whether the 1940 or the 1952 Act applies, the words "Notwithstanding the provisions of section 405 (b)", contained in those sections will be rendered meaningless. The ruling of the court below, therefore, is not confined to cases of the instant type but has a far-reaching effect which was apparently not recognized.

(5). In concluding that an alien, who had filed a declaration of intention prior to December 24, 1952, thereby immediately acquired a right to have his qualifications for citizenship determined under the 1940 Act, the court below indirectly

achieved an inequitable and wholly unwarranted result, which was unquestionably not intended by Congress when it enacted Section 405 (b).

This indirect result affects a group of aliens whom Congress in the 1940 Act specially exempted from certain of the general requirements of the Act, because of some particular status. The group included, among others, veterans and spouses of United States citizens. Aliens in this group were exempted from various provisions of the 1940 Act, including that of filing declarations of intention. Their naturalization process commenced with the filing of their petitions for naturalization, following the completion of their required period of residence. Aliens in this group who did not have petitions for naturalization pending on December 24, 1952, are thus denied the privilege of proceeding under the 1940 Act, the provisions of which were in some respects more liberal as to them than are those of the 1952 Act. Only if they had petitions pending on that date can they claim the benefits of the 1940 Act. Conversely, however, by the interpretation adopted by the court below, a large group of *non-exempt* aliens, such as respondent, are being given the benefits of the 1940 Act merely by reason of having filed a declaration of intention, even though not qualified to file petitions prior to the effective date of the new Act.

The resulting inequity can be readily perceived. For example, under certain prescribed circum-

stances, the wife of a United States citizen was entitled to file a petition for naturalization under the 1940 Act without a declaration of intention and after one year's residence, Sec. 310 (a), 54 Stat. 1144, 8 U. S. C. (1946 ed.) 710 (a). Under the 1952 Act, she would require three years' residence, Sec. 319, 66 Stat. 244, 8 U. S. C. 1430. If, on December 23, 1952, she were one day short of the one-year residence period, she would have been barred from filing a petition under the 1940 Act and would have to wait and file under the 1952 Act. Yet, a non-declaration-exempt alien, such as respondent, irrespective of his length of residence or lack of other qualifications, could, if the decision below should be affirmed, have preserved to himself the benefits of the 1940 Act merely by having filed a declaration of intention immediately following his arrival in this country. Thus, what Congress intended as a special benefit to a select group has been automatically converted by the lower court's ruling into what, for practical purposes, amounts to a penalty.

In sum, aside from its nullifying effect on particular provisions, i. e., Sections 311, 313 (a), 315 (a), 318, and 331 (d) of the 1952 Act, the failure of the court below to give to Section 405 (b) the plain meaning which Congress intended, i. e., that only certain persons who had petitions pending on December 24, 1952, are amenable to the

1940 Act, and all others to the 1952 Act, has this specific three-fold effect:

(1) it saves the benefits of the 1940 Act to aliens who were required by the 1940 Act to file declarations of intention and who did so before December 24, 1952, *even though on that date they were not qualified to file petitions for naturalization;*

(2) it deprives of the benefits of the 1940 Act aliens who were expressly exempted from the declaration of intention requirement by Congress, unless they had petitions for naturalization pending on December 24, 1952, even if they were then fully qualified to file petitions;

(3) it makes subsection (b) surplusage with respect to aliens who had filed both declarations of intention and petitions for naturalization before December 24, 1952, because their "right" to naturalization is made dependent upon the filing of the declaration and not upon the subsequent filing of the petition.

Thus, a clear and unambiguous statute, simple of application, has been so distorted by strained interpretation that rights have been improvidently given, inequities have been perpetrated, and the will of Congress has been thwarted. Such a result should not be perpetuated. Cf. *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59.

D. THE WISDOM OR HARSHNESS OF SECTION 405 (B) WAS NOT A MATTER FOR THE COURT'S CONCERN

The opinions of the lower courts reflect an undertone of reluctance to find that Congress had intended what the plain meaning of its 1952 enactment indicates or that it meant to make requirements for naturalization any stricter for those who, like respondent, had complied with a single step preliminary to the filing of a naturalization petition. As Judge Magruder stated, in his concurring opinion, he doubts that "Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again" (R. 51). The words of Section 405 (b) are clear, however, and their relationship to other parts of the 1952 Act lends strong support to a literal reading. It is beyond the judicial power, therefore, to "disregard legislative intent in order to provide equitable relief in a particular situation." *Bochm* v. *Commissioner*, 326 U. S. 287, 295. The wisdom of the legislation is the concern of Congress, not the courts. *Queenside Hills Company* v. *Saxl*, 328 U. S. 80, 82; *United States* v. *American Union Transport*, 327 U. S. 437, 457. This Court has said that in enacting naturalization legislation,

> Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without reason, as it sees fit. [*Terrace* v. *Thompson*, 263 U. S. 197, 220.]

Moreover, as we have just shown, the First Circuit's reading itself produces serious inequities, certainly as grave as those the court finds in the government's position. The choices are for Congress, not the courts, and it has made known its will in clear and definite terms in Section 405 (b). The failure of the court below to enforce the statute, as written, was error.

## CONCLUSION

For the above reasons, it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded to the District Court with directions to deny respondent's petition for naturalization, but without prejudice to the filing of a new petition by respondent on his completion of the statutory period of actual physical presence.

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# APPENDICES—STATUTES INVOLVED

## Appendix A: Comparison of Savings Clauses In the 1940 and 1952 Acts

To facilitate comparison, the full text of the savings clauses of the Nationality Act of 1940, Section 347, 54 Stat. 1168, 8 U. S. C. (1946 ed.) 747, and the pertinent portions of the savings clauses of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U. S. C. 1101, note, are set forth below in parallel columns.

| Nationality Act of 1940 | Immigration and Nationality Act of 1952 |
|---|---|
| SAVINGS CLAUSES | SAVINGS CLAUSES |
| Sec. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization or of citizenship, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect. | Sec. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes [sic], con- |

NATIONALITY ACT OF 1940

SAVINGS CLAUSES

(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

IMMIGRATION AND NATIONALITY ACT OF 1952

SAVINGS CLAUSES

ditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

[Subsections (c), (d), and (e) are not here pertinent.]

## Appendix B: Other Provisions of the Immigration and Nationality Act of 1952

Sections 311, 313 (a), 315 (a), 318, and 331 (d) are from Title III of the Act and contain the specific exceptions to the savings provisions of Section 405 (b). Section 316 (a) contains the new actual physical presence requirement for naturalization which respondent had failed to meet. Section 334 (f) eliminates the declaration of intention as a condition precedent to filing a petition for naturalization, but permits the filing of such documents for certain other purposes.

These sections provide, in full or in pertinent part, as follows:

> Sec. 311. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married. Notwithstanding section 405 (b), this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this Act. [66 Stat. 239, 8 U. S. C. 1422.]
>
> Sec. 313. (a) Notwithstanding the provisions of section 405 (b), no person shall hereafter be naturalized as a citizen of the United States—
>
> (1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches,

opposition to all organized government; or

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or [sic] any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 7 of the Subversive Activities Control Act of 1950; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have

such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be cir-

culated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5). [66 Stat. 240, 8 U. S. C. 1424 (a).]

SEC. 315. (a) Notwithstanding the provisions of section 405 (b), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on

the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States. [66 Stat. 242, 8 U. S. C. 1426 (a).]

SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. [66 Stat. 242, 8 U. S. C. 1427 (a).]

SEC. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his

immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: *Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this title. [66 Stat. 244, 8 U. S. C. 1429.]

SEC. 331. * * *

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. Notwithstanding the provisions of section 405 (b), this sub-

section shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date. [66 Stat. 252, 8 U. S. C. 1442 (d).]

SEC. 334. * * *

(f) Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe. Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing a petition for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this or any other Act. [66 Stat. 254, 8 U. S. C. 1445 (f).]

## Appendix C: Other Provisions of the Nationality Act of 1940, as Amended

Sec. 307. (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. [54 Stat. 1142, 8 U. S. C. (1946 ed.) 707 (a).]

Sec. 331. An applicant for naturalization shall make, under oath before, and unless prevented by sickness or other physical disability only in the office of, the clerk of court or such clerk's authorized deputy, regardless of the place of residence in the United States of the applicant, not less than two nor more than seven years at least prior to the applicant's petition for naturalization, and after the applicant has reached the age of eighteen years, a signed declaration of intention to become a citizen of the United States, which declaration shall be set forth in writing, in triplicate, and shall contain substantially [certain specified] averments by such applicant: * * * [54 Stat. 1153, as amended, 61 Stat. 121, 8 U. S. C. (1946 ed. Supp. V) 731.]



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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

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UNITED STATES OF AM....ICA, *Petitioner*

v.

RICHARD ISAAC MENASCHE, *Respondent*

---

**On Writ of Certiorari to the United States Court of Appeals for the First Circuit**

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## BRIEF FOR THE RESPONDENT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

No. 104

UNITED STATES OF AMERICA, *Petitioner*

v.

RICHARD ISAAC MENASCHE, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

## BRIEF FOR THE RESPONDENT

### THE QUESTION PRESENTED

Where an alien has filed a declaration of intention prior to the effective date of the Immigration and Nationality Act of 1952, is the ensuing naturalization proceeding governed by the provisions of the 1952 Act, or by the Nationality Act of 1940, which was the law in effect at the time his declaration was filed?

### STATEMENT

There is no dispute as to the facts.

## ARGUMENT

### I. SECTION 405(a) OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 REQUIRES THAT THE PROVISIONS OF THE NATIONALITY ACT OF 1940 APPLY TO THE NATURALIZATION PROCEEDINGS WHICH WERE INITIATED BY THE FILING OF A DECLARATION OF INTENTION PRIOR TO THE EFFECTIVE DATE OF THE 1952 ACT.

#### A. The Plain Language of Section 405(a) Requires That Respondent's Naturalization Proceeding be Governed by the Provisions of the 1940 Act Because His Filing of a Declaration of Intention Prior to the Effective Date of the 1952 Act Gave Rise to a "Right in Process of Acquisition," a "Status" and a "Condition"; and Initiated a "Thing," a "Matter," and a "Proceeding," All of Which Were in Existence at the Effective Date of the 1952 Act.

The language of Section 405(a) of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U.S.C.A. Sec. 1101, footnote, is plain and unambiguous. It provides, in the broadest, most all-inclusive, and sweeping language possible, that positions of benefit or disadvantage attained or acquired under the previously effective laws should not be affected or disturbed by applying the provisions of the Immigration and Nationality Act of 1952. It is difficult to conceive that Congress could have chosen language which could more comprehensively embody or more specifically convey its intention that the statutory *status quo* with respect to all matters which had been initiated prior to the effective date of the 1952 Act continue without regard to the provisions of the new law except as might be otherwise specifically excepted.

Section 405(a) expressly embraces situations in which a declaration of intention was filed prior to the effective date of the 1952 Act, for it specifically and explicitly preserves the validity of previously filed declarations of intention. Certainly there would be little point in preserving the "validity" of a declaration filed under a previous law, if the fact that the declaration was filed does not operate to preserve the applicability of the prior law to the naturalization proceedings instituted by the

declaration. *Cf. Zigalnitsky v. United States*, 164 F. 2d 549, 550 (C.A. 2).

Even if there were any question as to what was intended in preserving the validity of declarations of intention, Congress also expressly provided further on in Section 405(a) that prior law must remain in effect with regard to "all such prosecutions, suits, actions, proceedings, [statuses], conditions, rights, acts, things, liabilities, obligations, or matters" existing at the effective date of the 1952 Act. Although declarations of intention are not expressly included in this enumeration, there can be no doubt that Congress, in using such all-inclusive language, intended that the items enumerated embrace declarations. *Cf., Bertoldi v. McGrath*, 178 F. 2d 977, 979 (C.A.D.C.).

As the Government concedes (Brief for the United States, p. 18), there is little room for elaborate statutory construction where the words of the statute are plain. The language of Section 405(a) is crystal clear, and operates to assure:

> ". . . that if a person had actually started on his way to attaining any of the benefits or liabilities proper under the old act, his right or liability to continue was preserved by the savings clause." *In re Katsumi Yoshida*, 113 F. Supp. 631, 632 (D. Haw.).

By filing his declaration of intention, Respondent had taken the first statutory step toward acquisition of citizenship. He had started on his way to obtaining a benefit to which he was entitled under the 1940 Act. See *In re Katsumi Yoshida, supra.* He had taken "the first step in the process of naturalization." *Petition of Sproule*, 19 F. Supp. 995, 997 (S.D. Cal.). The filing of a declaration of intention gives rise to a "status" or "condition" for purposes of naturalization in that it puts the declarant in a position to file a naturalization petition in due course. It commences a "thing" or a "matter," and certainly a naturalization "proceeding." *Petition of Sproule, supra.* See also *Petition of Zigalnitsky*, 72

F. Supp. 987, 988 (S.D.N.Y.), reversed on other grounds, 164 F. 2d 549 (C.A. 2), in which the court clearly regarded the filing of a declaration of intention as instituting "naturalization proceedings."[1]

So forthright is the language and so obvious the intendment of Section 405(a), that there has been absolute unanimity among the Courts in holding that this section preserved prior law in the cases of aliens who have filed either a declaration of intention or an "Application for Certificate of Arrival and Preliminary Form for Petition of Naturalization" (Form N-400) prior to the effective date of the 1952 Act. These include both courts below (R. 47-51, 38-42); the District Court for the District of Hawaii in *In re Jocson*, 117 F. Supp. 528; and the District Court for the Eastern District of Virginia, in *Petition of Pringle*, 122 F. Supp. 90, *aff'd sub nom. United States v. Pringle*, 212 F. 2d 878 (C.A. 4). We know of no judicial decision to the contrary.[2]

**B. The History and Background of Section 405(a) Clearly Supports the Plain Language of Section 405(a) That the 1940 Act Governs Naturalization Proceedings Where a Declaration of Intention Was Filed Prior to the Effective Date of the 1952 Act.**

If anything beyond the plain language of Section 405(a) is necessary to establish that Section 405(a) operates to

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[1] Against this background, the Government's argument (Brief for the United States, pp. 26-28) based upon the elimination, in the 1952 Act, of the requirement for filing a declaration of intention can be given no weight especially since, under the 1940 Act, aliens could initiate naturalization proceedings *only* by filing a declaration of intention, except in a few instances where Congress waived this requirement.

[2] The decisions in *Shomberg v. United States*, No. 48, O.T. 1951, 115 F. Supp. 336, 210 F. 2d 82, are based upon consideration of Section 318, as well as Sections 405(a) and (b) of the 1952 Act; and the First Circuit's decision in *United States v. Cunha*, 209 F. 2d 326, rested upon 405(b) alone—which was sufficient to save the petition there involved—and it was unnecessary to refer to Section 405(a).

make the 1940 Act applicable to the hearing and determination of naturalization proceedings instituted by a declaration of intention filed prior to the effective date of the 1952 Act, the history and background of Section 405(a) clearly does this.

The phrases "status," "condition," and "right in process of acquisition" were not contained in Section 347(a) of the Nationality Act of 1940, 54 Stat. 1168, 8 U.S.C. (1946 ed.) Sec. 747(a), the predecessor savings clause to Section 405(a) of the Immigration and Nationality Act of 1952. These words are new to the 1952 Act. As the Government has rightly noted, "the reason for their inclusion becomes perfectly clear by a reading of the conflicting opinions in *United States ex. rel. Aberasturi* v. *Cain*, 147 F. 2d 449 (C.A. 2) and *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C.A.D.C.)." (Brief for the United States, pp. 24-25.) These two circuit court decisions were in conflict, and this conflict was never taken up to this Court. Instead, the conflict was resolved by the enactment of Section 405(a) of the 1952 Act which—as the Government has indicated—wrote into the new statute the interpretation of the Court of Appeals for the District of Columbia in the *Bertoldi* case and declined to accept the interpretation of the Second Circuit in the *Aberasturi* case.

As the Government has pointed out, these cases dealt with the question, under the Nationality Act of 1940, whether old or new law controlled the derivation of citizenship by a minor, without court decree, through the parents' naturalization. Under the law in effect prior to the Nationality Act of 1940, the minor derived citizenship provided he resided permanently in the United States for five years prior to reaching his twenty-first birthday; under the 1940 Act, the residence requirement of five years had to be completed before the minor reached his eighteenth birthday. In each instance, the minor involved would have automatically qualified for citizenship under the old law but would not have been so qualified if the new law applied.

The Second Circuit took the position that the savings clause in the Nationality Act of 1940 "does not cover a mere condition unattended by any affirmative action." 147 F. 2d at 452. In the *Bertoldi* case, however, the Court of Appeals for the District of Columbia concluded that the old law was controlling because Section 347(a) of the Nationality Act of 1940 expressly provided that "rights partly accrued under the old act should not be disturbed by the new." 178 F. 2d at 978.[3]

As noted, Section 405(a) of the 1952 Act wrote into law the view expressed in *Bertoldi*. In so doing, and by using the words "condition," "status," and "right in process of acquisition," the Congress expressly provided that even where certain inchoate rights, unaccompanied by any affirmative act on the part of an alien, were in the process of ripening into citizenship, nothing contained in the 1952 Act should be construed to affect these rights. It would be clearly illogical to say that a provision which has gone so far as to preserve inchoate rights unaccompanied by affirmative action on the part of an alien does not also preserve rights in the process of accruing which stem from affirmative acts—such as the filing of a declaration of intention.

Thus, the Government has argued only half way. For though it has conceded that the words "condition," "status" and "right in process of acquisition" found their way into Section 405(a) as a result of the *Aberasturi-Bertoldi* conflict so as to insure the preservation of inchoate rights in the process of acquisition at the time the 1952 Act became effective, the Government fails to carry this argument to the necessary conclusion that these words encompass *a fortiori* the situation where the alien has taken the affirmative and positive step of filing a declaration of intention.

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[3] "'Thing, or matter' in this statute cannot be limited to that which is tangible or physical, because if thus limited, the words would have no meaning here." 178 F. 2d at 979.

The decided cases indicate that Respondent's situation would have come within the parent savings clause, Section 347(a) of the Nationality Act of 1940, even before the specific reference to "status, condition, right in process of acquisition" was added. Section 347(a) had been characterized by the courts as being "about as broad as language could be," *Bertoldi* v. *McGrath*, *supra*, at 978, and "the broadest possible language," *United States ex rel. Aberasturi* v. *Cain*, *supra*, at 452 (dissenting opinion); and it was well recognized that its purpose was to insure that "*naturalization matters or proceedings* awaiting disposition at the time of the effective date of the statute," were not to be disturbed or affected by changes contained in it. *In re Shaver*, 140 F. 2d 180, 182 (C.A. 7) (emphasis added). See also *Petition of Zigalnitsky*, *supra*.[4]

And Section 347(a) has not only been held applicable to "naturalization proceedings" but also to instances where declarations of intention had been filed. Thus, in *In re Urmeneta*, 42 F. Supp. 138, the question presented was whether an alien who withdrew his declaration of intention, and thereby avoided military service, was to be forever barred from citizenship under the Act of July 9, 1918, 40 Stat. 885, 8 U.S.C. Sec. 366, so specifying, and which was in effect at the time of the withdrawal, notwithstanding the repeal of this ban by the Nationality Act of 1940. The District Court for the Eastern District of Wisconsin held that the petitioner's "act" of withdrawing his declaration "existed" at the time the 1940 Act went into effect, within the meaning of Section 347(a), and that, therefore, his position with respect to naturalization was to be determined under the 1918 Act. But *cf. Petition of Otness*, 49

[4] See also Report of the Joint Departmental Committee, published by the House Committee on Immigration and Naturalization, 75th Congress, 3rd Session, commenting on the provisions of the 1940 Act which ultimately became Section 347 (a) and (b), set out at p. 12, *infra*, to the effect that these sections contain "the customary clauses by which the status quo is maintained in relation to *naturalization proceedings* and other related matters pending at the time . . ." (Emphasis added.)

F. Supp. 220 (N.D. Cal.). It would appear that if Section 347(a) could be interpreted as preserving old law with regard to the *withdrawal* of a declaration, it should also operate to preserve the applicability of prior law with respect to the proceedings initiated by the *filing* of the declaration.

In *Petition of Zigalnitsky, supra*, the question presented was whether Section 347(a) required that the period of limitation for filing a naturalization petition be determined under the law in effect when the declaration of intention was filed, or within the time provided by the 1940 Act. The United States District Court for the Southern District of New York held that Section 347(a) required that the earlier law govern; and in so holding implicitly decided that Section 347(a) preserved old law for aliens who had filed declarations of intention prior to the effective date of the Nationality Act of 1940.

Thus, the parent provision of 405(a) of the 1952 Act—Section 347(a) of the 1940 Act—was considered by the courts as being applicable to naturalization proceedings and as saving old law for those naturalization proceedings instituted prior to that Act's effective date. Furthermore, this provision was also considered by the courts as covering naturalization cases where merely a declaration of intention had been filed prior to the effective date of the 1940 Act. Certainly, Section 405(a) of the 1952 Act, which uses all the words of the 1940 provision (and more), must embrace all situations of the kind covered by its predecessor provision. And by adding the words "condition, status, right in process of acquisition," Congress has manifested an intention to enlarge the scope of 405(a) over its parent. We conclude, therefore, that the history and background of Section 405(a) supports and reinforces the Section's plain language; and requires the application of prior law to a naturalization proceeding commenced prior to the effective date of the 1952 Act by the filing of a declaration of intention.

## II. SECTION 405(b) DOES NOT PRECLUDE OR PROHIBIT THE APPLICATION OF THE PROVISIONS OF THE 1940 ACT TO NATURALIZATION PROCEEDINGS INITIATED BY A DECLARATION OF INTENTION FILED PRIOR TO THE EFFECTIVE DATE OF THE 1952 ACT.

Petitioner reads Section 405(b) of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U.S.C.A. Sec. 1101, footnote, as requiring the application of the 1940 Act to all naturalization proceedings in which a naturalization petition was filed prior to the effective date of the 1952 Act, *and as prohibiting the application of the 1940 Act to all other naturalization proceedings*. This is a palpably erroneous reading of Section 405(b). Section 405(b) prohibits nothing: its language is cast in affirmative rather than negative terms. It refers only to naturalization petitions filed prior to the effective date of the 1952 Act and provides that the old law shall apply to them. It makes no reference to declarations of intention, nor does it specify how subsequently filed petitions are to be treated where such petitions represented the perfection or consummation of proceedings instituted prior to the effective date of the Act.

The Government seeks to read a prohibition into Section 405(b), apparently on the assumption that because it expressly provides for one instance, it impliedly prohibits all other instances. In so arguing, the Government treats Section 405(b) as if it read:

> "(b) Except as otherwise specifically provided in Title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed, *and all other petitions for naturalization shall be heard and determined under the provisions of this Act.*"

But the italicized language does *not* appear in Section 405(b)!

If Section 405(b) stood alone, and was not immediately preceded by Section 405(a), there might be some substance to the Government's position. But Section 405(b) is

obviously a form of supplement to Section 405(a) and cannot, therefore, be read in isolation. When the Government urged its construction of 405(b) in *Petition of Pringle*, *supra*, the United States District Court for the Eastern District of Virginia stated unequivocally:

> "Although subsection (b) of the savings clauses, supra, does affirmatively declare that the 1940 Act shall govern pending petitions, its implication is not strong enough to negative the equally plain intent of subsection (a)—that other and earlier steps towards naturalization should also preserve and project the provisions of the 1940 Act." (122 F. Supp. at 92)

The Court of Appeals for the Fourth Circuit affirmed this decision, expressly indicating approval of the District Court's reasoning. *United States* v. *Pringle*, 212 F. 2d 878.

Nor can Section 405(b) be interpreted as creating an exception, in the case of naturalization proceedings, to Section 405(a) under the "unless as otherwise specifically provided therein" clause of the latter. Section 405(a) contemplates that for an individual to lose a benefit or advantage acquired under earlier law, it is necessary to find a *specific* provision removing the situation from the scope of Section 405(a). It is clear that Congress did not desire that Section 405(a) be negatived by implication, but only by specific statutory language. The analogous phrase of Section 347(a) of the 1940 Act was "unless otherwise provided," and Congress in carrying the phrase over to Section 405(a) of the new Act deliberately inserted the word "specifically."

Section 405(b) does not *specifically* provide for an exception to Section 405(a) with respect to the law governing naturalization proceedings resulting from a declaration of intention filed prior to the Act's effective date. Although Congress must have had Section 405(a) in mind when it drafted Section 405(b), it did not include in Section 405(b) language *specifically* indicating that Section 405(b), rather than Section 405(a), should be controlling

with respect to naturalization proceedings. In sharp contrast, when Congress wished to make a specific exception or qualification in a subsection "b" to the provisions of a subsection "a", it did so clearly and precisely and left nothing to implication. Cf. Sec. 327 (a) and (b), 66 Stat. 248, 8 U.S.C. Sections 1438(a) and (b). See also Sections 328(b)(2) and 336(c), 66 Stat. 249 and 66 Stat. 257, 8 U.S.C. Sections 1439(b)(2) and 1447(c); 329(b)(5) and 336(c), 66 Stat. 250 and 66 Stat. 257, 8 U.S.C. Sections 1440(b)(5) and 1447(c).

If Sections 405(a) and 405(b) are read in the light of the plain meaning of their language, there is no inconsistency or lack of harmony between them, and full force and effect can be given to the language of each. Section 405(a) obviously applies to each and every situation, including naturalization proceedings, in which benefits or disadvantages have attached under earlier law. Section 405(b) merely specifies certain circumstances under which the provisions of the 1952 Act, rather than prior law, may apply with respect to the hearing and determination of naturalization petitions. The fact of the matter is that insofar as the language of Section 405(b) refers to consideration of naturalization petitions under prior law, this language does not, and there is no indication that it was ever intended to, add to or detract from the basic provisions of Section 405(a).

If a problem of reconciling Sections 405(a) and 405(b) exists as the Government seems to suggest, that problem must have existed equally under the Nationality Act of 1940, since Sections 347(a) and 347(b) of that Act were in essential respects identical to the present provisions. Section 347(a) contained sweeping, all-inclusive language (similar to 405(a)) preserving the effect of prior law, and Section 347(b) provided that:

> "Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years

> thereafter in accordance with the requirements of law in effect when such petition was filed."

If Section 405(b) is to be read as providing an exclusive savings clause for naturalization proceedings, Section 347(b) should have been similarly interpreted. It is apparent, however, that Section 347(b) has never been, and could not have been so interpreted in the light of its origin.

Legislative consideration of the Nationality Act of 1940 was initiated by a message to the Congress from the President on June 13, 1948. The President's message transmitted a proposed Nationality Code drafted by a Joint Departmental Committee composed of the Secretary of State, the Attorney General, and the Secretary of Labor.[5] Sections 346(a) and 346(b) of the proposed Code were savings clauses identical in all essential respects to Sections 347(a) and 347(b) as finally enacted in the Nationality Act of 1940. The Joint Departmental Committee, at page 63, commented on these clauses as follows:

> "Proposed Section 346 contains the customary clauses by which the status quo is maintained in relation to naturalization proceedings and other related matters pending at the time the proposed cost (sic) becomes effective.
>
> "Under proposed subsection (b) a period of 2 years would be granted during which any petition for naturalization filed prior to enactment of the new measure might be heard under the law in effect when the proceeding was begun. This period of time is not unreasonable in view of the fact that in many naturalization courts but few naturalization hearings are held, as frequently as once a year in some localities."

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[5] The President's message, and the proposed Nationality Code were published by the House Committee on Immigration and Naturalization, 75th Cong., 3rd Session.

It is obvious that the Joint Departmental Committee, the original drafters of the savings clause, regarded subsection (a) as providing for the applicability of prior law and subsection (b) as merely imposing a two-year limitation in the case of naturalization proceedings. The Committee would certainly have made more specific comments about subsection (b) had it intended that subsection to operate, separate and apart from subsection (a), as the basic savings clause with respect to naturalization proceedings.

It is obvious also that the courts consistently regarded Section 347(a), and not Section 347(b), as the basic provision for ascertaining whether the substantive provisions of the 1940 Act or of prior law were controlling with respect to naturalization petitions or declarations of intention pending when the 1940 Act became effective. *In re Shaver*, 140 F. 2d 180; *In re Urmeneta*, 42 F. Supp. 138; *Petition of Otness*, 49 F. Supp. 220; *In re McInnis*, 50 F. Supp. 303 (D. Mass.); *Petition of Hirsch*, 50 F. Supp. 638 (D. Pa.); *Petition of LaBella*, 52 F. Supp. 980 (D. Conn.), and *Petition of Zigalnitsky, supra*. In none of these cases did the court look to Section 405(b) as the controlling provision with respect to naturalization proceedings, but in all of them Section 405(b) appears to have been regarded simply as imposing a two-year limitation upon the provisions of Section 405(a) relating to naturalization petitions. Thus, in *In re McInnis*, the court stated:

> ". . . Section 347(a) kept alive the petition in the present case, but only to the extent allowed by the provisions of Section 347(b) . . ." 50 F. Supp. at 304.

And in *Petition of LaBella*, the court stated:

> "Section 347(a) saves existing petitions and proceedings from destruction upon the taking effect of the Act. . . . Section 347(b), however, limits the effect of this saving clause insofar as petitions are concerned by requiring pending petitions to be heard and

> determined within two years after the act shall take effect in accordance with the requirements of law in effect when such petition was filed." 52 F. Supp. at 981.

When Congress concluded, in drafting the 1952 Act, that the two-year limitation should be dispensed with, there was no reason for retaining any part of Section 347(b). The Congress wished to make some exceptions to the savings clause in certain types of naturalization proceedings, and obviously chose to preserve the pre-existing Section 347(b), stripped of the two-year limitation provision, as a vehicle for these new limitations. Section 347(a) was, therefore, carried over to the new Act as Section 405(a) in broad and all-inclusive form, and the revised Section 347(b) was carried over as Section 405(b). The language of Section 405(b) relating to the hearing and determination of naturalization petitions in accordance with prior law is of no greater significance than the identical language was in Section 347(b) of the 1940 Act.

Any other interpretation of Sections 405(a) and 405(b) results in creation of an inconsistency between these provisions and the necessity for giving considerable less than full force and effect to Section 405(a), which, of course, is contrary to the plain meaning and scheme of the statute. Three District Courts and two Courts of Appeal have considered the precise problem of statutory interpretation involved in the present case and have had no difficulty in reading the language of Section 405(a) and Section 405(b) in a manner which gives full effect to the plain meaning of the words used. *Petition of Menasche*, 115 F. Supp. 434, *aff'd. sub nom. United States* v. *Menasche*, 210 F. 2d 809; *Petition of Pringle*, 122 F. Supp 90, *aff'd. sub nom. United States* v. *Pringle*, 212 F. 2d 878; *In re Jacson*, 117 F. Supp. 528. We think that the only confusion that exists with regard to these provisions stems from the Government's proffered construction of them.

## III. THE CONSTRUCTION OF SECTIONS 405(a) AND 405(b) ADOPTED BY THE COURTS BELOW DOES NOT HAVE THE EFFECT OF NEGATING OR NULLIFYING OTHER PROVISIONS OF THE ACT, NOR OF PERPETRATING INEQUITIES.

The Government argues (Brief for the United States, pp. 31-34) that if Section 405(a) is interpreted as extending the provisions of the Nationality Act of 1940 to naturalization proceedings initiated by a declaration of intention filed prior to the effective date of the 1952 Act, important provisions of the 1952 Act will be virtually nullified and serious inequities will result, and that Congress surely did not intend that the Act be interpreted in a manner which would produce this result.

A. Section 405(b) is prefaced by the clause "except as otherwise specifically provided in Title III. . . ." Sections 311, 313(a), 315(a), 318, and 331(d) of Title III of the Act all contain the phrase "notwithstanding section 405(b)" or "notwithstanding the provisions of section 405(b)," and therefore constitute exceptions to Section 405(b). The Government argues that these provisions manifest the Congress' intention to make these sections of Title III applicable to the hearing and determination of naturalization petitions whenever they may have been filed, and thus to remove naturalization proceedings from the scope of the savings clause insofar as concerns the applicability of these provisions; and therefore, that if Section 405(a) is regarded as controlling with respect to situations in which declarations of intention were filed prior to the effective date of the 1952 Act, these excepting provisions will be virtually nullified.

The fact is, however, that neither the construction urged by Respondent, nor the decisions of the courts below can nullify, or have nullified, any of these provisions of Title III.

How the provisions of Title III are affected is a question involved in *Shomberg* v. *United States*, No. 48, O.T. 1954, which is now before this Court on writ of certiorari. Shomberg filed his naturalization petition prior to the effective date of the 1952 Act, and argued that

Section 405(a) required that the petition be determined under the provisions of the 1940 Act. The Government contends, however, that Shomberg did not meet the requirements of Section 318 of the 1952 Act in that deportation proceedings were pending, and that the requirements of Section 318 were made expressly applicable "notwithstanding the provisions of Section 405(b)." The Court of Appeals for the Second Circuit stated in its decision that if Section 405(a) were to be read as overriding Section 318, Section 318 and the other similar provisions of Title III would be nullified. The Government makes the same argument in this case, but the argument does not apply here.

The only question presented in the instant case is whether Section 405(a) preserves the applicability of prior law where a declaration of intention was filed prior to the effective date of the 1952 Act; and Sections 311, 313(a), 315(a), 318, and 331(d) are not—in even the remotest fashion—involved. Respondent's position is not necessarily inconsistent with the position of the Court of Appeals for the Second Circuit in the *Shomberg* case. Even if Section 318 of the 1952 Act, and the other four sections of Title III are applicable—because of the "notwithstanding the provisions of Section 405(b)" clause—to situations in which naturalization petitions were filed prior to the effective date of the Act, the plain language of Section 405(a) would still apply to the case of Respondent. Section 405(b), and the five specific sections of Title III which are exceptions to it, would, at the most, operate only to remove naturalization proceedings from the embrace of Section 405(a) to the extent necessary to make the five provisions of Title III applicable in lieu of prior law.

Certainly, it is not a necessary consequence of the decisions of the courts below that Sections 311, 313(a), 315(a), 318, and 331(d) are nullified or "rendered meaningless" (Brief for the United States, p. 31). The effect on these sections should be considered in the *Shomberg* case and not in this one.

B. The Government also argues that interpreting Section 405(a) so as to make the benefits of prior law available to individuals who filed declarations of intention prior to the effective date of the 1952 Act, would place such individuals in a more advantageous position than a group of aliens, including veterans and spouses of citizens, who under the 1940 Act were singled out for favored treatment by being exempted from the necessity for filing declarations of intention.

As an example, the Government points out (Brief for the United States, pp. 32-33) that under the Nationality Act of 1940 the alien spouse of a United States citizen could file a petition for naturalization after one year of residence, Sec. 310(a), 54 Stat. 1144, 8 U.S.C. (1946 ed.) Sec. 710(a); but that under the equivalent provision of the Immigration and Nationality Act of 1952, three years of residence is required, Sec. 319, 66 Stat. 244, 8 U.S.C. Sec. 1430. The Government therefore argues that an alien spouse of a citizen who had just less than one year's residence on the effective date of the 1952 Act, would be required to meet the longer residence requirement of the new law, rather than the shorter period of the old. The Government further points out that alien spouses of citizens were not required, under the 1940 Act, to file declarations of intention; and thus, the Government contends, alien spouses who did not file declarations could not have the benefit of the savings provisions in Section 405(a).

Of course, nothing in the 1940 Act precluded such alien spouses from initiating naturalization proceedings by filing a declaration of intention rather than relying upon the filing of the petition itself.[9] Nevertheless, the Government finds in this difference an "inequity" unintended by the Congress.

[9] Section 310(a) of the Nationality Act of 1940, 54 Stat. 1144, 8 U.S.C. (1946 ed.) Sec. 710(a), provided only that "No declaration of intention *shall be required*" to commence naturalization proceedings for such spouses, but this provision did not preclude a spouse from filing a declaration if he wished to do so. See *Brief for the United States*, p. 27.

In making this argument, the Government overlooks the fact that alien spouses of citizens may have acquired a "status" or a "condition" within the meaning of Section 405(a), so that the provisions of the 1940 Act favoring them, would remain applicable. Quite possibly, loss of the benefit afforded these aliens under the 1940 Act was among the "unforeseen effects upon pre-existing statuses and conditions" which Congress sought to avoid in enacting Section 405(a). *Cf. Ex parte Robles-Rubio*, 119 F. Supp. 610, 613-14 (N.D. Cal.).

However that may be, if such inequities do exist, they are not the consequence of Respondent's position before this Court, nor of the construction of the law adopted by the courts below. Rather they arise from the enactment of the Immigration and Nationality Act of 1952 in a form which makes more stringent the prerequisites for citizenship. After all, it was the Congress which increased the resident requirement for alien spouses of citizens to three years in the 1952 Act, from one year in the 1940 Act. But, as the Government points out (Brief for the United States, pp. 35-36), the wisdom of the legislation is the concern of the Congress, not of the courts; and if there is an "inequity", it was created by the Congress when it enacted the Immigration and Nationality Act of 1952.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below should be affirmed.

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